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ABSTRACT

A hearing before the Senate Committee on Indian Affairs received testimony concerning the feasibility of providing direct federal funding through block grants to tribes and the ability of tribes to administer local welfare and social services programs. An Assistant Secretary of the Department of Health and Human Services (DHHS) listed federal human services programs with specific funding allocations for Native Americans, described federal support to tribal governments in providing services to children and families, and discussed the Clinton Administration's support for welfare reform but opposition to the block grant approach. A representative of the Office of Inspector General, DHHS, reported on a study indicating that the current structure of DHHS programs created a barrier to tribal governments receiving federal funds for foster care and other child welfare services. Other witnesses included U.S. Senators; other elected officials; and representatives of numerous tribes, tribal agencies, and national Indian organizations. Their testimony included the following topics: high levels of poverty and unemployment on reservations, the need for tribal governments to design and manage their own social services programs, concern that tribal sovereignty and the special government-to-government relationship between the tribes and the federal government be maintained, avoidance of conflict between tribal and state governments, tribal determination of its service population, and service delivery by multitribal consortia. Appendix of written statements includes program descriptions and funding details. (SV)

RC

S. HRG. 104-131

DIRECT FUNDING THROUGH BLOCK GRANTS

ED 391 616

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

OVERSIGHT HEARING ON PROVIDING DIRECT FUNDING THROUGH BLOCK GRANTS TO TRIBES TO ADMINISTER WELFARE AND OTHER SOCIAL SERVICE PROGRAMS

APRIL 5, 1995
WASHINGTON, DC

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OVERSIGHT HEARING ON PROVIDING DIRECT FUNDING THROUGH BLOCK GRANTS TO TRIBES TO ADMINISTER WELFARE AND OTHER SOCIAL SERVICE PROGRAMS

WEDNESDAY, APRIL 5, 1995

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:32 a.m. in room 485, Senate Russell Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Murkowski, Inouye, Simon, and Wellstone.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. I want to thank all of the witnesses for appearing before the committee, in particular those of you who have traveled great distances to be here. I know that you have done so because welfare reform will significantly impact the lives of tribal members in your States and your parts of the country.

I do not have to restate the statistics that reveal that American Indians and Alaska Natives are disproportionately represented as welfare recipients compared to other populations in the United States. You are all too familiar with this data. It is imperative, however, that this information be provided to other members of Congress.

Since the 104th Congress began, the committee has heard the concerns of Indian tribes and Alaska Natives that the unique needs of Indians will be ignored during the welfare reform debate. Unfortunately, Indian concerns were not part of the debate in the House because an amendment offered by Congressmen Don Young and Bill Richardson that included provisions for Indian tribal governments was rejected by the Rules Committee. Fortunately, we do not have that kind of procedure in the U.S. Senate, which is one reason why Senator Inouye and I both left the House. [Laughter.]

However, I was pleased to learn that the Senate Finance Committee recently invited testimony from Indian tribes in its welfare reform hearings at the request of its chairman, Senator Packwood.

I have publicly stated on several occasions that I believe that welfare reform has the potential for offering a rare opportunity for Indian tribes. The primary reason that the Congress is undertaking

welfare reform and promoting block grants is to enhance local government control over these programs. Our rationale is similar to the Federal Indian policies that I and Senator Inouye and other members of this committee have continuously promoted for Indian tribal governments. To date, however, the discussion on who should administer block grants has been limited to the States.

I understand the desire of Indian tribes to advance the government-to-government relationship and Indian self-determination by accessing direct funding from the Federal Government, and I have made a commitment to do all that I can to assist tribal governments in this effort. To move toward this goal, the committee must obtain information on the feasibility of providing direct Federal funding to Indian tribes, and the ability of Indian tribes to administer local welfare assistance programs or to use Federal funds to contract for State or county services.

We will examine existing Federal programs which provide both direct and indirect funding to tribes. It is also necessary to obtain information on the successes and the obstacles experienced by tribes that currently administer welfare assistance programs.

Finally, I'm sure that you all understand that it is extremely important that the committee address many concerns that will likely develop in the debate on welfare reform, such as: how can Congress provide flexible tribal administrative authority and still hold tribes accountable for basic financial management and program implementation; how can Congress encourage tribal and State courts to cooperatively enforce child support orders to offset State and tribal cash assistance programs; and how can we establish clearly defined service populations, so that States and tribes avoid duplicative services, and more importantly, ensure that individuals in need receive assistance.

As you can see, due to the interest in this issue, we have a longer witness list than usual. Therefore, in order that we can accommodate all of the witnesses and that there is ample time for questions and answers, I would ask that each witness summarize their testimony. Be assured that I have read the testimony of all the witnesses and it will be made a part of the record.

Senator Inouye is here this morning, our distinguished vice chairman. Unfortunately, he will have to leave, because he must attend to the Defense Appropriations Supplemental that we all hope is in its final throes, although that may be a bit premature. I know you must leave us, Senator Inouye, but we're grateful that you could come by this morning, and we know that you have some views on this issue and we appreciate your participation and understand why you have to leave.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. I thank you very much, Mr. Chairman, and I wish to commend you for scheduling this hearing this morning. Because welfare reform may very well be the most important initiative on the agenda of Congress. Sweeping reform measures are the subject of much debate and much controversy. And our mission here is to assure that the sovereign status of tribal governments and the important role that Indian governments have played in the

administration and the delivery system of Federal programs has a recognized place in any new system.

Given the high rates of unemployment in many communities across Indian Country as you have noted, and the consistent conditions of poverty, we must also assure that native people are not barred from access to those programs which provide basic sustenance to Indian children and their families because there are no jobs in their reservation communities, and thus no means of securing employment.

Mr. Chairman, as you have noted, we have a full witness list this morning, so I will not consume further time. But as you have indicated, I would like to apologize to one and all that I will not be able to stay for the bulk of this hearing, because in a few minutes, the conference committee will convene, hopefully, to resolve the matter of the supplemental appropriations.

But I wish to thank one and all of you for taking the time to prepare testimony for this morning's hearing and to share your views with the committee. I can assure you that I will read all of your statements most carefully.

Thank you very much.

The CHAIRMAN. Thank you, Senator Inouye.

I have a note here from Senator Kassebaum, that says,

Due to a conflict with the hearings of the Labor Committee, I cannot be at this morning's hearing of the Indian Affairs Committee to welcome and introduce two Kansas witnesses, Joan Rebar, Chairman of the Sac and Fox of Missouri, and Ida Nadeau, Director of the United Tribes JTPA program. I will be meeting with them later today. I look forward to reviewing the testimony and to working with you, the members of the committee and the Kansas tribes in fashioning meaningful and equitable welfare reform.

Our first witnesses are Mary Jo Bane, who is the Assistant Secretary for the Administration for Children and Families, of the Department of Health and Human Services; and George Grob, who is the Deputy Inspector General, Office of the Inspector General, Department of Health and Human Services. Welcome, both of you. Please proceed with your testimony.

STATEMENT OF MARY JO BANE, ASSISTANT SECRETARY, ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. BANE. Mr. Chairman, Senator Inouye, it's my pleasure to come before you today to discuss Federal funding to Indian tribal governments for welfare and social service programs that fall within the Administration for Children and Families.

As the Assistant Secretary for Children and Families, I'm responsible for administering over 60 programs that promote the economic and social well-being of families, children, individuals and communities. What I'd like to do today is summarize my testimony and briefly describe how Indian tribes receive funding under many of our programs, and then talk some about the current welfare reform proposals that are before the Congress.

There is a strong administration commitment to address the critical issues that confront tribes in Native American communities, as well as to help them achieve their social, economic and governance objectives. President Clinton demonstrated his personal commitment when he met with Indian leaders from around the country to

outline the principles that executive departments and agencies are to follow in their relationships with tribal governments. As stated by the President,

> The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes and court decisions.

Our philosophy within the Administration for Children and Families is to respect the right of self-determination and self-governance of all tribes and Native American communities and organizations. Within this context, our goal is to provide assistance to Native American communities so that they can become self-sufficient. Among the numerous programs administered by ACF, tribes receive funding directly in some cases, and in other cases, funding or services are provided through the States and localities.

I'm pleased that we were able to submit to this committee last month our phase I report on the provision of services to Native Americans by programs within ACF. The report provides abstracts and some good information on the services that we provide.

We encourage each of our programs to address Native American needs by looking beyond categorical boundaries and by merging funds wherever permitted in the statute. Merging funds creates a concentration of resources to better address local problems with a more comprehensive initiative. The Administration for Native Americans has successfully merged funds from agencies within as well as outside the Department. For example, within the Department, several operating divisions are working together to help reduce the incidence of Fetal Alcohol Syndrome and infant mortality among certain tribes.

In addition to focusing on funding mechanisms for tribes, our job in the Federal Government is to support tribal governments in providing a comprehensive and responsive array of services to meet children and family needs. We've worked over the last 2 years to strengthen our ability to provide this support. For example, we held our national tribal child care conference, the first one ever, in response to requests from our tribal customers for a chance to share ideas and experience. The second conference will be held this summer.

In addition, with support from this committee, we've moved ahead to ensure that American Indian Head Start is a flagship component of our national Head Start program, exemplifying the emphasis on quality, comprehensive services for young children and their families.

I'd now like to speak about the impact of welfare reform on funding to tribes. First, I would like to reiterate this administration's strong support for enactment of real and effective welfare reform that promotes the basic values of work and responsibility. Last year, the President proposed a sweeping welfare reform package that embodies these values. It would have established tough work requirements while providing opportunities for education, job training and child care to working people; imposed tough child support enforcement measures; required teen mothers to live at home, stay in school and identify their child's father; increase State flexibility and accountability; and maintained protections for children.

The administration's reform package reflected its commitment to tribal governments and its recognition of the unique needs of tribal communities. For example, our welfare reform proposal provided new opportunities for tribal governments to participate in the jobs program, it strengthened the funding of the tribal JOBS program, it authorized tribes to expend JOBS funds on economic development activities, it provided special flexibility for tribes in administering the provisions of time-limited benefits and related work activities, and it gave tribal governments access to title IV–A child care funds to support self-sufficiency efforts. These provisions and the other provisions in the administration's bill recognized not just the principle of tribal sovereignty and tribal right to self-governance, but also the unique economic circumstances faced by Native American communities.

The block grant approach, as envisioned in the Personal Responsibility Act that was passed last month in the House, falls far short of the basic goals and values that most Americans want welfare reform to promote. Unfortunately, the bill is too weak on moving people from welfare to work, and too tough on children. The House bill relies on the States to solve the problems of requiring work and protecting children. It would completely scrap the shared State, Federal and tribal partnership. It would cut funding, eliminate the State match, and block grant most programs.

This would create a system in which opportunities and responsibilities could vary dramatically from one State to another, where children might be protected in some States but not in others, where accountability for the money the taxpayers pay into the Federal Treasury rests almost entirely with the States. Under this system, it's difficult to predict how tribal members would fare.

Not only would the bill that was passed by the House block grant most programs to the States, but it would remove current tribal funding set-asides for ACF programs, with the exception of the child care and development block grant. Current statutory tribal set-asides for programs such as JOBS and for family preservation and family support would be eliminated. Therefore, even in situations where tribes currently receive direct funding, services under the block grants would be provided by the States using their block grant funds.

In conclusion, Mr. Chairman, I look forward to working with this committee to build upon our support of Native American self-governance, economic development and self-sufficiency. We will work closely with Native American leaders as we proceed with phase II of our report to this committee on the development of a plan, including legislative recommendations, to allow tribes and other Native American organizations and communities to consolidate the grants administered by our department. In addition, as ACF programs come before the Congress, we will examine with you the appropriateness of incorporating provisions to allow direct funding for tribes. I'd be happy to answer any questions at this point.

[Prepared statement of Ms. Bane appears in appendix.]

The CHAIRMAN. Thank you very much, Secretary Bane.

You mention in your testimony some of the successes that some tribal governments that receive direct funding from the Administration for Child and Families have had. Do you support the con-

cept of block grants to Indian tribes or tribal consortia to enable them to administer their own programs?

Ms. BANE. Mr. Chairman, as I said, the administration has serious concerns about the block grant approach, especially to those programs that are currently individual entitlements, including cash assistance, foster care, adoption assistance, and child care to support work.

Our administration's welfare reform proposal, as I noted, did provide for direct funding to the tribes to run JOBS programs, to run work programs and to provide child care. We think that's very important and very appropriate, and we hope to work with the Senate as it considers welfare reform to develop a real proposal that protects everyone's interests, including those of the tribes.

The CHAIRMAN. So I take it your answer is some ways yes, and some ways no? Is that correct?

Ms. BANE. I think that's correct. As I say, we have serious concerns about the block grant approach generally.

The CHAIRMAN. The Inspector General reports that Indian children are in substitute care at a rate that is 3½ times the national average. However, out of all the funds that HHS administers for child welfare, relatively few dollars are actually reaching Indian tribes. Do you have a proposal to ensure that Indian tribes receive their appropriate share of funds to provide services to this growing segment of our population?

Ms. BANE. I think the suggestions that the Inspector General made in her report on ways that we could work more effectively between the tribes and the States are very good. We are looking at those suggestions very closely and want to make sure that funds are available.

The other thing I think we need to look at closely is the programs that are administered by the Bureau of Indian Affairs, which to some extent serve the same purposes. We also need to work very closely with them to make sure that the programs are coordinated so that we can best serve Indian children.

The CHAIRMAN. But you haven't taken any specific steps yet to implement those options?

Ms. BANE. We are working with the States trying to make sure that they understand the requirements of the Indian Child Welfare Act and the special needs of Indian children. So we've been working with the States in order to bring these about.

The CHAIRMAN. Are you by chance familiar with the legislation that I have proposed that would propose a 3-percent set-aside for tribes to administer social services block grants?

Ms. BANE. Yes, sir.

The CHAIRMAN. What's your view of that?

Ms. BANE. Mr. Chairman, the administration doesn't have an official position. There's no question that the social services needs of tribes are very great. I think that one of the striking findings of the report by my colleague was the small extent to which States are moving money through to the tribes. Again, I think again, there are several options short of legislation, which would help us ensure programs work better between the States and the tribes.

We need better coordination between our programs and those of the Bureau of Indian Affairs [BIA]. I think the tough thing about

this issue is that the States are feeling really pressed in terms of social services and the fact that the social services block grant has declined dramatically in real terms over the last decade putting real pressure on the States. As we look at this in the overall budget context, we're going to need to explore several alternatives to make sure that the States and the tribes are able to improve their social services systems.

The CHAIRMAN. Well, I think we are in agreement, and I think Mr. Grob's testimony will corroborate that, and we will certainly appreciate his corroboration of something that we have known for a long time, that States simply do not, perhaps for the reasons you just stated, if given the funds, do not equitably distribute these funds to the Indian tribes. I don't believe that there's a Machiavellian scheme to harm the Native Americans, but I do believe it's simply the way that they set their priorities, and that's clear.

So if we go to a system of block grants, and I understand yours and the President's and the administration's objections, I would hope that you would be supportive of making sure that we do fence off certain funds to go to Indian tribes so that they do not continue to experience what we have seen, and that is a disproportionately smaller amount going to the Indian tribes, not only on a basis of population, but clearly, compellingly, on a basis of need.

Senator Simon, welcome. Thank you for being here.

STATEMENT OF HON. PAUL SIMON, U.S. SENATOR FROM ILLINOIS

Senator SIMON. Thank you very much. And I apologize in advance to the other witnesses. Madam Secretary, good to see you again. In your statement, you talked about real and effective welfare reform and tough work requirements. I favor those things. I have to say, I think 95 percent of what goes on around here as welfare reform is not welfare reform. And unless you have jobs, create a jobs program with it, which I favor, as you know, some kind of a modified WPA type of program. Unless you have that, this is meaningless. A tough work requirement on the Indian reservations when there are no jobs just doesn't mean very much. I think we have to face that reality.

If we're going to have block grants, and I'm not very enthusiastic for them, but if we are, I favor the McCain type of set-aside, and I should not be getting into the next witness's testimony, but I've been reading it here, Mr. Inspector General, because I'm not going to be here, we have a markup in the Judiciary Committee. But in block grants, let me just read from your testimony.

In 15 of the 24 States with the largest Native American populations, eligible tribes receive neither title IV–E nor title XX funds, did not receive from 1989 to 1993. In 1993 alone, these 15 States received $1.74 billion in title IV refunds and $1.289 billion in title XX funds. And Indian reservations got nothing.

Now, you can't tell me, on the basis of need or any other kind of allegation that that should happen. Eight States reported that 46 tribes received $1.9 million, 2.3 percent of the State's $82 million title IV refunds, while four States reported that 32 tribes received $2.8 million, 2.9 percent of the State's $98 million title XX funds.

If I may use another comparison, Mr. Chairman. We passed, a few years ago, and I regret to say I voted for this, we consolidated some of the education programs and gave it as a block grant to the States. That included the school library program. During the whole Depression, not a single library in this Nation closed. After we block granted these education funds, including school libraries, half the school libraries in the State of California have closed.

Just to hand out block grants to States or even to Indian reservations without indicating what this is for, I don't think is a wise move. So I am not very sympathetic to block grants. But if we're going to have them, I'm sure for the McCain amendment, which will see that people who really need it get that.

That's not a question, I guess, just an observation.

The CHAIRMAN. I'd certainly like to have the Honorable Secretary confirm her agreement with that, though.

Ms. BANE. I do. I would also like to mention, if I could, one success story in this arena, which is the child care and development block grant. As you know, there is a 3-percent set-aside for tribes in the child care and development block grant. We have been working with the tribes, not only to make sure that they know that money is available and to get it, but also to improve their child care programs. In the time since that legislation has been passed and that we've been working with the tribes, we've had some real successes. So I just wanted to mention that as one which I believe is a success.

Senator SIMON. And if I could just add, I am for flexibility. I am pleased that this committee adopted legislation of mine on job training to permit Indian reservations to consolidate all their job training programs. And 9 reservations now have that and 117 Alaska villages, others are considering it. And apparently, it is a real success. And as I read the Inspector General's comments on child welfare services, maybe we ought to do the same thing in child welfare services. So I am for flexibility. I am not just for handing out money and you let it drop like rain and it can flood whatever it wants to. I am for targeting it if we're going to do that.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my friend from Illinois for his usual insightful and compassionate remarks.

I'd just like to add, Madam Secretary, what you already know. What a lot of Americans don't know, and I think was lost in the House deliberations, there are certain specific obligations that we have, as consummated by solemn treaty, that if we gave the block grants to the States and expect them to then provide the funds to the Indian tribes, it would be a violation of the government-to-government relationship that has been established. And I will freely admit, this relationship has been honored in the breech more than anything else.

But the fact is, if we formalize that, then we would be saying that this unique relationship between the Government and tribes would be violated. And that's the principle side of it. I think the practical side of it, by the way, Mr. Grob, you probably don't have to testify, Senator Simon just gave, I think, the most compelling part of your testimony. [Laughter.]

But the fact is that in reality, also, if we do that we know what the reality is as far as the allocation of funds are concerned. And again, in deference to the States, many times State officials think, well, the BIA or some other organization will take care of the tribes. We don't have to give these moneys to the Indian tribes. So as I say, I don't think it's a calculated evil. But the result is obviously the same.

I understand you have to leave, Ms. Bane, so I want to thank you for being with us this morning, and we look forward to working with you as we adjust to whatever the will of the Congress is. The reason why we're having this hearing, and I know you're aware, is because Indian tribes all over America are deeply concerned that they may be again left out as the Congress decides to fundamentally reorganize the way that it does business.

So we thank you for being here. Do you have any final comment that you'd like to make?

Ms. BANE. I share your sentiments. I think one item we are most concerned about as it relates to block grants is the fact that they are so rigid and it's very difficult for them to adjust to changes in economic circumstances, to changes in population, to changes in need. I think some of the biggest dangers of block grants are to very vulnerable populations and very vulnerable communities, such as Indian tribes.

I just want to reiterate our general concern about block grants and of course to share your hope that as we do move forward on welfare reform, we will make sure to take into account and speak to the very serious and dramatic needs of the tribes.

The CHAIRMAN. Well, could I just respond to that? Our effort in self-determination and self-governance has been to place those decisions as to where money is allocated in the hands of the elected tribal leadership.

Ms. BANE. Yes.

The CHAIRMAN. We feel that, let me speak for myself, I feel that the tribal chairman and tribal council can best determine where funds are spent, rather than someone residing in Washington, DC.

Senator SIMON. Or even the State capital.

The CHAIRMAN. Or in the State capital. Exactly.

So in theory, at least, if we gave the money in some form to the tribal leaders, the elected tribal leaders, to make the decisions, then we think more rational and compassionate decisions can be made there than, in all due respect, in your office.

So this is a careful balancing act here that we're trying to maintain the accountability that understandably concerns you and the Senator from Illinois, and me, but at the same time pursue the entire concept that I've been trying to pursue for 12 years, I will admit with limited success, tribal determination and tribal governance. You cannot have that without the decisions being made by the elected leadership. See what I mean? Even if those decisions are wrong.

Ms. BANE. Mr. Chairman, if I might, I think it's important to distinguish what I'm saying about block grants from the notion of State flexibility and tribal self-governance. This administration is very supportive of both State flexibility and tribal self-governance, and we very much agree with you that those decisions are best

made at the local level, whether it be a State or a community or a tribe.

But you can have a lot of flexibility, both for States and for tribes, without having an inflexible funding stream that's simply capped and doesn't respond as the current entitlements do now to economic changes, to changes in population and so on. So while we are very supportive of the notion of flexibility and self-determination, I think that we still need to look very closely at whether block grants, with their inflexible funding stream, are the only way or the best way to carry out the goals that I think we all share.

The CHAIRMAN. But if there is a better way, which is not specific block grant, that I would be more than eager to hear your recommendations. When elected leadership is deprived of the ability under the present system to make the fundamental decisions, then the elected leadership becomes a hollow shell. So if there are other ways that we can attack this problem, I would be more than happy to consult with you in depth as to how we can further the goals that we both share.

I thank you very much for coming.

Ms. BANE. I would like to take you up on that, Mr. Chairman. That would be terrific. Thank you very much.

The CHAIRMAN. Thanks for coming this morning.

Mr. Grob, welcome.

STATEMENT OF GEORGE GROB, DEPUTY ASSISTANT SECRETARY FOR EVALUATION AND INSPECTIONS, OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. GROB. Good morning, Mr. Chairman, and Senator Simon. Again, for Senator Simon, I'm George Grob, and I'm the Deputy Assistant Secretary for Evaluation and Inspections at the Department of Health and Human Services.

And I'm here at your request to describe the results of the study that we completed on the access of Indian tribes to Federal tribes for child welfare. We've provided copies of the study to your committee, and my written testimony provides a detailed summary. I'll try to keep my summary brief, although it may not even be necessary, as you were saying. I think most of the points have been made.

Overall, I would conclude from the study that we did that the structure of the program——

The CHAIRMAN. Could I ask the staff to lift up that second chart, so that I can see it better? Thank you. Or is there a way of propping it up so you don't have to hold it up?

Mr. GROB. Could we move it up to the stair? Is that better?

The CHAIRMAN. Yes; but now I can't see the chart behind it. [Laughter.]

Maybe if we could just prop it up on the stand, the podium there, it would be fine. Thank you.

Mr. GROB. I guess I would conclude from our study that the current structure of the programs in the Department of Health and Human Services at least do provide a barrier for tribes, tribal governments, to access Federal funds for child welfare services.

But I believe that those barriers reflect complexities in such things as the inter-governmental relationships between the tribal governments, the State governments, a couple of Federal agencies. They reflect problems that occur because of economies of scale. And they reflect attempts to respond to the complexities of the problems of child welfare itself, which is a rather complicated subject. I think that the issues that we raise in our study probably provide a good case example of these same kinds of problems occurring in many other Federal programs.

To put things in perspective, we had mentioned earlier that the Indian tribal members are disproportionately represented in substitute care. And you can see this on the chart here, where 16 out of every 1,000 Indian children are in substitute care, whereas 4½ of non-Indian children are out of every 1,000. But that masks the economies of scale. That large bar represents 9,000 Indians. The small bar represents 287,000 of the non-Indian population. And many of the programs that we have are designed to respond to a very large group of people who need the assistance.

This chart here shows the six programs of the Federal Government that have the most direct bearing on child welfare services. Three of them are in the BIA. And they provide either money directly for Indian tribes for child welfare services, or for social services that could be used for child welfare purposes. And as you can see from the chart, the funding there goes directly to tribes. Most tribes participate, the funding is in the tens of millions of dollars.

When you look over here at the programs in the Department of Health and Human Services, you again see three programs. But here, the funding is in the billions of dollars. And generally speaking, the funds go to the States, and either by design or by effect, very few of those funds go directly to tribes, to tribal governments.

The CHAIRMAN. Could I interrupt you 1 second?

Mr. GROB. Please.

The CHAIRMAN. Title XX and titles IV–A and IV–B are specifically earmarked for child welfare, is that right?

Mr. GROB. Mostly. title IV–E is the big one. That one's in the middle and that is for foster care. That's the big program. Title IV–B, which is $300 million, is for child welfare services. Now, title XX is a social services block grant, and the States who get the money can use that for any social services, including child welfare. We really don't know how much is spent on child welfare services from the States.

The CHAIRMAN. I see. The reason why I ask is because in the Indian Self-Determination Act, $60 million covers a broad variety of programs.

Mr. GROB. Yes.

The CHAIRMAN. So to earmark that as a tribal child welfare services is a little bit misleading.

Mr. GROB. We didn't mean to be. We tried to identify the programs that could be a source of funding for the tribes if they wished to use the funds for child welfare. And in fact, the chart is somewhat parallel in the sense that the Indian Self-Determination Act, which is the largest one there, corresponds on the left to the title XX. They are both social service programs that authorize it,

where the other two programs are much more directed to child welfare services.

The CHAIRMAN. Thanks.

Mr. GROB. And also, we were aware of your proposal that was directed to title XX in social services, which was another reason for the concentration on that.

Now, I think it's already been mentioned by several that the effect of these programs, at least in the Health and Human Services area, is that the tribes don't get much of the funds. Let me just give you a couple of statistics here. In title IV–E, the foster care, in our study, we examined the funds received by more than 500 tribes. Only 46 of them, in 8 States, received any money at all under title IV–E, the foster care program. They received $1.9 million, which was .07 of a percent of the total program funds. And in title XX, we found 32 of the more than 500 tribes received funds in four States. And they received $2.8 million, about one-tenth of a percent.

Now, to put things in perspective, there's various estimates of the Indian population in the country. They run between about .4 and .8 percent of the population, from things I've read. So there is a disproportionately lower amount of funds going to Indian tribes here compared to the population as a whole.

The reasons for this are several. The largest programs, the title XX and title IV–E, actually do not provide any direct funding for the Indian tribes. The States may provide funds to tribal governments, but there's no requirement for them to do so. And in the case of the biggest of these programs for child welfare, title IV–E, if the States wish to give funds to the tribal governments, they need to work out an agreement with each tribe as to how that will be done.

And some barriers arise in this process. Some barriers are that other disputes are pending that make the negotiations difficult about what this mutual agreement is. The States become accountable for the tribal performance. The States may have to assume responsibility for the matching funds that may be required from the tribe for the program. And there are sometimes cases where the tribes are involved with more than one State, and the requirement would be for them to reach agreements with all of them.

For the child welfare services program, there's an administrative requirement that the tribes have an agreement with the BIA, "a 638 self-determination contract," as a pre-condition for getting awards. And also, the Administration for Children and Families must approve the plan. The tribes must also abide by the various conditions for improving child welfare services.

Finally, one result of the relatively small amount of money there is that tribes, even if they do comply with these requirements and make applications, often end up with very small amounts, sometimes perhaps just a few thousand dollars. In a couple of cases, a few hundred dollars. And finally, there is a 25-percent matching share.

Now, there are lots of different options for solving these problems. One of them would be direct funding. Another one might be combining funding streams. There are some administrative steps that can be taken, removal of some of the administrative require-

ments. Perhaps, we believe, that the Administration for Children and Families could provide technical assistance to tribes based on what the tribes who have been successful in getting funds, what they've done. They might be able to help the other tribes do that.

I've probably said more than enough, and I'll now thank you for the opportunity to present the study and answer any questions you may have.

[Prepared statement of Mr. Grob appears in appendix.]

The CHAIRMAN. Thank you very much. Your testimony has been very helpful.

You note by the chart, which I think is quite compelling, that Native American children are 3½ times as likely as children in the general population to be in substitute care. Do you have any numbers as to the duration that an Indian child would be in substitute care, as compared with non-Indian children?

Mr. GROB. I'm sorry to say that I don't have those numbers with me. But I do understand that the problem is more pronounced, and therefore more likely to continue. One of the important features here is that the child welfare program, the IV–B program, was intended in the States to reduce the time of stay of a child in welfare.

And those requirements, the so-called section 427 requirements, are in fact directed exactly to that, so that the child's case would have to be reviewed every 6 months and be reviewed even more thoroughly every 18 months. And the State would have a requirement to keep track of the children, so that they don't end up in foster care for long periods of time.

Now, the States themselves had a lot of difficulties initially comporting with these requirements. And there was a phase-in period. If those funds in that program were available to the Indian tribes, that is an example of the kind of requirements they would have to abide by. They would have to have that case management to make sure that the children don't stay in the foster care for a long period of time.

The CHAIRMAN. And right now, they generally do not have that kind of case management?

Mr. GROB. There are very few tribes that have applied for and received those, the funds under that program. I believe that that's probably an impediment for many of them being able to do so.

And if I may, Senator, some of that stems from the problem of economy of scale. The systems for doing that are appropriate when there are large numbers of children involved. When they are smaller, to have that kind of a system in place takes a greater toll in terms of the amounts of money that are available.

The CHAIRMAN. Your report at least suggests that perhaps the cleanest way to ensure that Indian tribes receive an equitable share under titles IV–E and XX is to make sure that funds go directly to tribal government. Is that an accurate description of at least one of the solutions that you say is suggested?

Mr. GROB. That certainly is an option, Senator.

The CHAIRMAN. Thank you.

I want to thank Senator Wellstone for being here. Senator.

STATEMENT OF HON. PAUL WELLSTONE U.S. SENATOR FROM MINNESOTA

Senator WELLSTONE. Thank you, Mr. Chairman. I actually will wait for questions of the next panel, since I didn't have a chance to hear the testimony. I do have an opening statement, along with a letter from Alfred Pemberton, who is Chairman of the Leech Lake Tribal Council from Minnesota that I'd like to have included in the record.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Senator Wellstone appears in appendix.]

The CHAIRMAN. Thank you, Mr. Grob, and we appreciate your testimony, and I especially appreciate the very in-depth investigation your office has done on this issue, and we look forward to working with you in the future. Thank you very much.

Mr. GROB. It's my pleasure. Thank you.

The CHAIRMAN. The next panel will be Bobby Whitefeather, who is the Chairman of the Red Lake Band of Chippewa Indians of Red Lake, MN. He's accompanied by Margaret Thunder and Richard Florhaug, Commissioner, Beltrami County, Bemidji, MN; Harry Early, who is the Chairman of the All Indian Pueblo Council of Albuquerque, NM, and the Honorable Nick Salazar, who is a State Representative, House of Representatives, State of New Mexico.

Chairman Whitefeather, welcome back before the committee. It's good to see you, and please proceed with your testimony, and welcome, Ms. Thunder.

STATEMENT OF BOBBY WHITEFEATHER, CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS, ACCOMPANIED BY MARGARET THUNDER, DIRECTOR, FAMILY AND CHILDREN SERVICES

Mr. WHITEFEATHER. Thank you, Mr. Chairman. First of all, good morning, Chairman McCain and other members of the committee. I'd like to express our thanks on behalf of the Red Lake Tribe for allowing us this time to testify on the very important subject of the welfare reform. For the record, I am Bobby Whitefeather, the Chairman of the Red Lake Nation in the State of Minnesota.

While we understand that the focus of this hearing is probably beyond the very fine initiative that you have introduced, Mr. Chairman, of S. 285, I would like to take this opportunity to thank yourself, Senators Inouye, Campbell, Thomas, and Simon for introducing and sponsoring S. 285. We realize that Senate measure 285 addresses only the title XX situation. However, I think in the overall issue of welfare reform that we need to take a look at the broader spectrum of the delivery of social services in Indian Country.

I believe this method would enhance or better enable the tribes to find solutions to the high levels of poverty, unemployment and this type of opportunity would allow tribal governments to design and manage and operate their own social services programs.

For information purposes, Mr. Chairman, I'd like to share some history with respect to Red Lake's particular situation in this overall welfare scheme. The Red Lake Band has a long and unique history in involvement in attempting to reform the manner in which welfare services are provided for the tribal members that live in Red Lake. Since 1993, the Red Lake Band has engaged in dialogue

and held discussions with Beltrami County about ways to change the administrative structure of the social programs that affect the members of the Red Lake Band.

The current status is that the county is responsible for administration of the welfare programs on the reservation. And in our discussions, the county has expressed a desire to either transfer some of the responsibilities or sometimes my friend here would like to say, be relieved of the responsibilities. However, I think we could work some sort of transitional procedure in attempting to do what we feel is a benefit for our respective constituents.

The main concern of the county, as who I like to call my partner here, Mr. Florhaug, is the cost of the administration of the welfare services. The costs of the program administration are very high. Although much of the costs are reimbursed by the Federal and State government, there still is a portion of cost that isn't currently incurred by the county through property taxes. And at this point, I would like to stress to the committee that the Red Lake Nation, the Red Lake Band of Chippewa Indians' land status is that we have never been allotted, and therefore the land does not have a tax base and we are not taxable.

But that is not to say that we don't contribute to the overall economic activity in the county. We participate in the economic activity in the country through jobs, procurement of goods, procurement of services, and also the irony of all this is that the people that are the recipients of public assistance do trade their commerce in the county. And therefore, this type of activity boosts the economic activity and enhances the property values of the county. Unfortunately, sometimes I'm said to report that there is a perception among some of our non-Indian friends in the county that the reservation is provided services and the county receives nothing in return.

Another major item of concern is that the State of Minnesota for the most part basically is, it's been very difficult to access shortfall funding with respect to a lot of our social services programs up in Red Lake. However, again as of late, we have engaged in some dialog with the State, and the county, in trying to identify the problems of the current system. And we're also developing strategies to improve the current system.

And I must stress that we are working toward a common goal, and that is to provide better services in the most economic and efficient way possible. So the needs of the constituents that I represent are better met.

At this time, I'd like to point out some additional problems within the current system that relate to the failure of the system as is delivered, and does not really currently address some of the poverty and unemployment and out of home placement issues that have been described here at the hearing that are disproportionate with respect to the American Indian population.

Some other statistics that I would like to quote is an overall study that was done in Indian Country is that Indian children, one half that are under the age of 6 live in poverty. Additionally, 50 percent of the female heads of household in Indian Country also live in poverty. But here again, I'm stressing that I must report to the committee that in Red Lake, the situation is even greater. Sev-

enty percent of our female heads of household live in poverty in Red Lake. The unemployment rate continues to hover around 50 percent.

And these are some of the obstacles that we are attempting to address in partnership with the county and the State. And the current system as set up right now is that the social workers that are on board are overwhelmed with large case loads. They are therefore unable to provide the quality type services that our young people and families need and so much deserve.

I believe a specific example here again is the foster care situation. In Red Lake, we have a lack of appropriate resources, inadequate staffing, and again, results in disproportionate high placement of our young Indian children in out of home environment. And I must report to you also that the foster care, the cost of the foster care on the reservation is one of the largest expenses that we have to deal with.

I would like to on behalf of the Red Lake Tribe offer perhaps some options on how to better deliver some of the services that are currently available to us. And it must be understood that the meaningful form of the welfare system as it pertains to Indians will only be accomplished with legislation which provides the authority and funding necessary for tribal governments to contract for or receive funds to operate our own welfare systems. The block grant approach has been discussed, the Red Lake Band does cautiously support the block grant approach.

However, again, I must stress that in order for Red Lake to safely assume any type of responsibility there has to be necessary funding. We do have the experience that is needed. And on the downside, perhaps, of some of the block grant approaches that have been discussed earlier is that the States sometimes squeeze out tribal governments in the availability of block grant type programs. And I believe it is critical that provisions in the final welfare legislation include authority for tribes to receive direct funding from the Federal Government to operate our own programs.

Again, there must be flexibility and choice, and I appreciate the words, Mr. Chairman, of the self-governance, self-determination concept which Red Lake does agree with very much. And there again, the tribes must be given every option, perhaps to varying degrees, as to how we manage our programs. Currently, Red Lake is not in a position to immediately take over the system. And the county and the State of Minnesota realize this, so I would recommend that there be some varying degrees of options where there would be some period of transition of the administration of services.

And while Red Lake supports the fundamental goal of the control of resources, I believe the tribal government is the best possible agency or government that would determine how the members would rely on these benefits. The tribal governments can tailor their own programs, which would enhance incentives that are culturally and socially appropriate. And I must stress again the cultural aspect of our particular reservation. Our situation is something that my ancestors and my grandparents have told me was never a situation that existed during their younger years. It's something that's transpired over a period of time.

There needs to be some targeting of specific social services that are in a more efficient manner. And I believe a good example is the tribe's job program, which has proven very successful to address specific tribe member needs. And I would like to respectfully request the committee to address the issue that, if there is a possibility or some discussion that the jobs program is in jeopardy, that you would do what you can to intervene and allow the tribes to retain this very valuable and flexible resource.

Any legislation that authorizes Indian tribes again must allow us to manage our own social services and also again we are looking at the Red Lake tribe and the county. We're trying to find a long-lasting solution. We are not looking at this as a short-term solution. And Mr. Chairman, I would like to highlight some very important remaining concerns.

And again, while the Red Lake Band does fully support the efforts and applauds the committee for making these resources available to tribes, however, as often happens, when authority is given to tribes to manage their own programs, the accompanying resources or resources that we assume are going to accompany this type of flexibility are often stripped from tribes, and therefore, there are no resources for tribes to operate these types of programs. And we would ask that the committee ensure that there be adequate resources for this endeavor.

To touch briefly on the overall welfare reform debate, Mr. Chairman, the well-publicized negative restrictions I believe must be discussed very thoroughly. Because of the unique conditions on reservations and in Indian Country generally Federal direction to States and tribes mandating required achievements and penalties for failure to do so is not appropriate. For example, the unemployment rate is very high in Indian Country and in Red Lake. Requirements that certain percentages of recipients of assistance be engaged in work activities would be unrealistic and unattainable for most tribal governments.

A final concern, Mr. Chairman, is that Red Lake would request that the committee ensure that the definition of tribal organization in the proposed legislation mirror and parallel the definition as defined in the Indian Self-Determination and Education Act of Public Law 93–638.

In conclusion, I would like to respectfully request that this committee include the similar statutory language as I previously have identified. And Mr. Chairman, on behalf of the constituents that I represent back home in Red Lake, my sincere appreciation for allowing me this opportunity to share my thoughts with you.

Thank you.

[Prepared statement of Mr. Whitefeather appears in appendix.]

The CHAIRMAN. Thank you very much, Chairman Whitefeather.

I note the presence of our colleague from Alaska, and I wonder if he would care to make any comments at this time.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

Let me just make two generalizations, if you will. I continue to express support for reforming the BIA general assistance program.

General assistance cash payments, I think, should be eliminated as much as possible, or perhaps all BIA general assistance funds should be dedicated to the Tribal Work Experience Program, the TWEP, under which the tribes contract with the BIA to provide public service work opportunities for the needy tribal members. I think this has worked well, it's worked well in my State. But I think the BIA is continuing to drag the process slower than it should be.

I have a different, perhaps, opinion than the Chair with regard to the proposition that we should earmark any portion of State welfare block grant funds and give them directly to the tribes. I think we're talking about 3 percent or thereabouts.

I'm not sure that there's a good reason why the Native American community should be treated differently when it comes to State welfare programs, particularly if they have the added advantage of participating in the Tribal Work Experience Program through the BIA. I think Native Americans benefit from and fully participate in numerous Federal programs administered by the State.

This is not new, it doesn't impact upon the government status of the Indian tribes or their jurisdictional relationship to the States or the Federal Government. So I'm going to withhold my position on the question of specific earmark designation, based on my belief that, I'm not convinced there should be a different treatment. But we'll see.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Murkowski. And now we'd like to turn to Commissioner Florhaug, who is also from Beltrami County. I think it is appropriate in this hearing that we have both the chairman of the tribe and county commissioner. I think the juxtaposition of your testimony is ample illustration of the kinds of difficulties that are experienced at the level in which you have to operate.

Welcome, Commissioner Florhaug.

Senator WELLSTONE. Mr. Chairman, might I also welcome the Commissioner.

STATEMENT OF RICHARD FLORHAUG, COMMISSIONER, BELTRAMI COUNTY, BEMIDJI, MN

Mr. FLORHAUG. Thank you. Good morning, Chairman McCain, and distinguished members. Thank you very much for asking me to testify, and thank you for picking this day. The cherry blossoms are spectacular.

I am Richard Florhaug, a commissioner from Beltrami County, in Minnesota. I serve District 4, which includes Red Lake Reservation. That's about half of my constituents. I took office in 1993, but back in 1965, the Beltrami County and the Red Lake Reservation started working together on the welfare, as Beltrami County opened an office in Red Lake, and I believe have eight employees up there now serving the reservation. It seems to be working out very well. It provided better access to the services to the Band members.

The goals of Beltrami County and Red Lake, it's just perfect timing, as far as I'm concerned, because when they did take office in 1993, we started meeting with Red Lake. And this was one of the

topics that came up, was Red Lake taking over the social services part. And we've working toward this and thinking how we could do it, and I think this would be just a perfect way of doing it.

The cost to the county, Beltrami County, is direct cost, in 1994 it was $367,000 that was a shortfall from all the other funding. And this is escalating from 1989, the shortfall was $60,000 and they're projecting close to half a million dollars this year. As was stated before, Red Lake does not contribute directly because of not having a tax base. Though they do contribute considerably in other ways.

Two years ago, we got $490,000 from the State of Minnesota. That was vetoed and we had to go back to the State and fought to get it reinstated. And it is reinstated. And it also is reinstated for this year. But what they keep saying is this year, which leaves us with an uneasy feeling about next year.

We've met with Maria Gomez, the Commissioner of Human Services in the State of Minnesota. She has assured us of her cooperation of working with Red Lake and Beltrami County. She said there wasn't any money available, but they have sent two people up to work with us in solving the problem basically on child placement, where if we can get to the cause of it and work on it from that end it would in the long run save us a lot of money.

In Beltrami County, we're willing to try something different. About a year ago, our director of human services resigned. And members of the assistant director came before our board with the idea of not having a director, but using a team approach to run the human services. We gave them a chance to do that. It has been in effect for about a year, and it seems to be working very well. They come to us about every two months and report.

There are obstacle and difficulties in the current system. Chairman Whitefeather did allude to the poverty. And Beltrami County has extreme poverty and unemployment levels. Twenty-four percent fall below the Federal poverty level, 9 percent unemployment, 15 percent receive public assistance. Our total budget for 1994 was $31,760,000, and our welfare budget was $13,500,00, 40 plus percent of our budget just goes into the welfare.

The percentage on the Red Lake Reservation is about 50-percent unemployment, 46 percent receive public assistance, about 50-percent below poverty level, 54 percent of the children under 18 years of age are below the poverty level, and 70 percent of the female heads of household or families are below the poverty level. Median household income in 1993 was about $12,000, or per capita, was $4,500.

Other obstacles are that Red Lake is basically, I shouldn't say isolated, that's not a real good word in this day and age, but the Village of Panemah is 60 miles from Bemidji, the courthouse, where if they had to come there, that's quite a drive. And the county has had in the past difficulty in hiring and recruiting the Indian employees. We are making an effort, I believe a better effort, now we have a county administrator that is very concerned, and we're trying. I think one of the reasons is the qualification of the people.

Experimenting with the tribe contracting for programs has been more successful. Ms. Thunder is involved in that. The family-based child protection services, the fraud investigation and the home

health services, Red Lake is doing that now, and I think it is a successful endeavor.

Another obstacle is the tribal child protection in the tribal court system with jurisdiction over the cases. The tribes have a different court than the county. And there is a little conflict there. In Beltrami County is responsible for funding all of these child placements. And neither has court jurisdiction over the other.

Now Red Lake has its own social service department, but in some cases it's a duplication of what the State and the county provides. And there is a little confusion over the roles and responsibilities. I strongly emphasize that Beltrami County supports Red Lake's position regarding welfare services, that the tribe should not be left out of the welfare reform process.

I believe that the tribes should be authorized to manage and operate their own services. Chairman Whitefeather and the other members of the council are very qualified. They are, as I said before, they're not only talkers, they're doers. They're looking to the future.

The bottomline for every place else is, I guess, we need sufficient resources, which is money. And we have committed, of course, we, the county board, to assisting Red Lake in any way. And we've stated before, an ongoing thing, that we'll let them take the lead. And if they need assistance, to come and we will give them any assistance that we possibly can.

I really believe that if you give the Red Lake Nation the money to operate their own services, with our cooperation and the State's cooperation, that it will succeed.

Thank you.

[Prepared statement of Mr. Florhaug appears in appendix.]

The CHAIRMAN. Thank you very much, Commissioner.

I note the presence of Vice President Thomas Atcitty, who is with us. And I understand you have a flight out. Would you like to go ahead with your testimony now, Mr. Vice President?

STATEMENT OF THOMAS ATCITTY, VICE PRESIDENT, NAVAJO NATION, WINDOW ROCK, AZ

Mr. ATCITTY. Thank you very much, Chairman McCain, for your indulgence and your willingness to adjust to some of our reservation schedules.

The CHAIRMAN. And I do understand that it's a very long trip back to Window Rock.

Mr. ATCITTY. I know you travel that quite often.

Thank you, Mr. Chairman, members of the committee. I am Vice President Thomas Atcitty of the Navajo Nation. And I appreciate the opportunity to testify before this committee on the welfare reform issue.

The Navajo Nation generally supports the idea that welfare reform is necessary. However, we are concerned that pending welfare reform proposals do not adequately address how the block granting principle will apply to Indian tribal governments. No. 2, it does not appropriately consider the special government-to-government relations between Indian tribes and the Federal Government.

On one hand, current welfare reform proposals would reduce the size of the Nation's welfare system, reduce out of wedlock births,

and expand State flexibility in addressing welfare problems. On the other hand, we are concerned that these proposals threaten to alter management and control of tribal welfare programs. These proposals will hinder our efforts to address the welfare needs of our people. Furthermore, these proposals fail to recognize and comply with the Indian Welfare Act. It is extremely important that our children's rights be observed and protected.

While this is a complex issue, we strongly believe that any future Congressional welfare reform proposal must explicitly address the needs and concerns of the Native Americans. The current welfare reform debate should recognize Indian tribes and not overlook the government-to-government relationship that Congress approved in the Indian Self-Determination Amendments and Contract Reform Act, and President Clinton reaffirmed with Indian tribal leaders 1 year ago.

It is for these reasons that we strongly advocate for funding proposal purposes all Federal agencies be given full authority to enter into direct contracts and grants with Indian tribes, rather than passing through these programs and funds through the State. The reason we say this is that I spent 14 years in the New Mexico State legislature. And invariably, Federal funds that counted the Native Americans were not fairly distributed for the purposes those funds were generated.

One case in point, the 874 impact aid funds that Education, for the purpose of educating Native Americans, in 1978 an amendment was offered wherein 25 percent additional funds would go to the reservations that generated those revenues. And for 10 years, the State of New Mexico took credit for those funds across the State. And we had to introduce a special legislation to do what the Congress had intended to do.

And so historically, these kinds of practices have been taking place at the State level, where our populations were used, yet the funds were never received by the Native Americans that generated those funds. And this is the reason we're suggesting that Indian tribes be considered rather than as an alternative of going through the States and passed on to the Indian tribes.

We respectfully request for Congress to continue recognizing and enhancing government-to-government relationships and to fulfill its trust responsibility by ensuring that Indian tribes have the means to exercise their sovereignty authority over welfare programs. We encourage an amendment to expand Public Law 96–638 to all Federal agencies, not only to the Department of Interior and Department of Health and Human Services.

We further strongly recommend for funding purposes that Congress adopt a set-aside of perhaps 5 percent for Indian tribes from the total amount of dollars to be appropriated to the States to serve Indian welfare recipients. And flexible waiver be provided so that the Indian tribes may exercise their option, because of their peculiar circumstances in which the different tribes are confronted with.

We also recommend that Congress not place Federal spending caps on programs or time limits on benefits. These programs and benefits are designed to assist our children and people. Time limits would disproportionately impact our people, especially those actively seeking employment in a depressed reservation economy.

The window of opportunity to participants in education and training programs cannot be reduced. Time limits, combined with the proposed Federal spending cap, would create an increasingly unskilled Navajo work force.

Navajos, as has been stated by the media, are the poorest of the poor Indians in the country. And we, although we are, our income is the lowest of all Indians, and yet we are attempting, in this new administration of Hale and Atcitty, to try to grab our bootstraps and overcome our poverty dilemma. We are attempting to do what we can. We don't want to continue to hold our hand out to the Federal Government. We'd like to do something in our own economy to where we will be a participant in helping the national debt be reduced.

The Navajos historically have always addressed the crisis that the Nation faced in the early 1940's, 1942 the Navajo Nation Council adopted a resolution offering its young people to help preserve the peace when the Nation was confronted the crisis of maintaining world peace. Indeed, in the course of the conflict, the Navajo language was utilized, in which the Japanese were totally confused, and that language helped bring about peace to the South Pacific.

And today the Nation is confronted with another crisis, that of the national debt. While we appreciate the concern of the Congress and the President, the Administration, we feel that if we are given the opportunity we want to be a part of that solution. We don't want to continue to be a burden to the Nation. And this is the reason that we're asking that fair treatment be provided.

I just heard here by the previous panel where the Indian children are getting a disproportionate amount of money for certain programs. And I would say that there is a reason. I think Congress has identified and understood those reasons. We are situated in very unique locations, hard to get to. Everything that is expended out there is extra compared to the urban and other settings of the dominant society.

So we are situated, in New Mexico for education purposes, the small school on a per capita basis, are funded quite greater than the schools like Albuquerque public schools. So the dilemma of inadequate funding continues to be one where the need is, and we appreciate your effort and understand your effort to reduce the national debt. And we want to be a part of the solution.

Thank you, Mr. Chairman, and members of the committee.

[Prepared statement of Mr. Atcitty appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Vice President.

Unfortunately, Senator Wellstone is required to attend another committee hearing, which seems to be our way of life around here. But he wanted to have the opportunity to discuss a few issues with Chairman Whitefeather and Commissioner Florhaug. So with the indulgence of our other friends from New Mexico, I'd like for Senator Wellstone to be able to go ahead at this time, and then we'll get to the other witnesses.

Senator WELLSTONE. Thank you, Mr. Chairman. Thank you for your graciousness, and I will be brief.

Just a couple of questions in areas where there's agreement and then a couple of maybe more difficult questions. Commissioner and Mr. Chairman, in a way I think you two are the perfect two indi-

viduals to be here, because you have really already been working together. So you in a sense kind of represent a model.

If Red Lake were given the opportunity to receive the welfare funds directly from the Federal Government to operate welfare programs, how would Red Lake proceed? In other words, would you contract out to the county? Would you contract out to another nonprofit? Would you run it yourself? How would you do it, Mr. Chairman?

Mr. WHITEFEATHER. Senator Wellstone, it is the belief of the tribal council up in Red Lake that this particular opportunity is not one where Red Lake would take over or transfer the responsibilities overnight. We would like to take the time and the opportunity to examine different options. And also take a look at what the county has to offer with respect to some of their expertise in transferring some of these responsibilities over to the tribe. Again, as I stated before, we would like to request some flexibility as to some different options as to how to proceed on the transitional process.

Senator WELLSTONE. And Commissioner, in your judgment and based on your experience, if we were to move in this direction, how would you see the best of a county-tribe relationship?

Mr. FLORHAUG. I feel like Chairman Whitefeather that I don't believe at this time they're ready to take over. And that is where we can be of assistance, in any way, that we'll cooperate, as a transition period, when they feel that they're ready to take on more, we'll work with them in this endeavor.

Senator WELLSTONE. And my last question, Mr. Chairman, is one that I'm thinking out loud about, and so I don't have an expectation as to how you'll answer this. Suppose you were given the opportunity to receive funds directly, and essentially directly run the welfare program, the AFDC program.

There are two concerns I have, and I want to know whether or not you would have these concerns, starting with you, Mr. Chairman. Would this then mean that you essentially would be in a position to decide who is going to be eligible, who wouldn't be eligible, who would be on, who would be off, and do you want to be put into that position? That's my first question.

And then the second question is, given the fact that at least in the block grant proposal coming out of the House of Representatives—I don't guess I know exactly ultimately what we'll do, Mr. Chairman, in the Senate, and what the compromise will be—but in the House bill you move away from the idea of an automatic expansion of funds to meet need. That's one of the big changes.

So if you have a deepening of poverty but you do not have the commensurate funding to go with that and that then gets shifted to some sort of local level. In State and local governments, either we walk away from people or it would get shifted to the county level. Or in this particular case, it would be shifted onto the tribe. And I wonder whether or not this is in fact the kind of direction that you want to go in.

Now, I ask these two questions understanding full well the concern about the trust relationship and a more direct relationship, the Federal Government relationship to tribes and the focus on tribal autonomy. But these are my concerns and I wonder how you would respond.

Mr. WHITEFEATHER. Senator Wellstone, I appreciate your concern and also I must tell you that I have given that quite a lot of thought, too, as to the decision making process with respect to cash assistance and AFDC. I am not familiar with, entirely familiar with the block grant process, but I would assume, as with any other legislation, there would be some regulatory requirements.

And I imagine that those requirements hopefully will be minimum requirements. I assume that when I talked about some of the flexibility that we would be allowed some flexibility to make those determinations.

In the long term, I've always advocated, as far as our movement toward self-determination, is that we work toward the alleviation or reducing of the social services issue. And I also have thought quite extensively about possible changes in the overall economy. As far as I'm concerned, in Red Lake, it cannot get any worse at this point.

However, again, the Council has been very progressive in looking at other alternatives to expand our opportunities to provide economic development and in the long term, provide employment opportunities for those people that don't have that type of opportunity at this point.

Mr. FLORHAUG. That's something, Senator Wellstone, that we have talked about. And as far as the States' responsibility, it's pretty hard for me to say for them. But they are still citizens of the State, they are still citizens of the county. We have a legal obligation and I feel strongly we have a moral obligation to make sure that we can assist them in any way that we can.

Senator WELLSTONE. I thank the both of you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Wellstone.

Next we'd like to turn to Harry Early, the chairman of the All Indian Pueblo Council. Welcome back before the committee.

STATEMENT OF HARRY D. EARLY, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL

Mr. EARLY. Thank you, Chairman McCain, Senator Wellstone, and Senator Murkowski, and my good friend Joe Trujillo representing Pete Domenici from the great State of New Mexico.

Mr. Chairman, I'd like to extend my good morning to Patricia Zell, who has been a long-time friend. She's always very helpful to the tribal leadership when we come back to this great city of Washington, DC.

Mr. Chairman, it is an honor and a privilege to appear before you today to present testimony on behalf of the 19 Pueblo Tribes of New Mexico. The Pueblo people send you their blessings and their greetings as you deliberate over these matters that affect our lives.

Our primary concern in these discussions of block grants is that Congress not diminish the trust responsibility it has to our people, and that reform does not undermine tribal sovereignty and the government-to-government relationship between the United States and Indian tribes. Mr. Chairman and members of the committee, I want to express my appreciate for your giving us an opportunity to be a part of this discussion before any policy decisions are made.

Our tribal leaders and Indian people are very confused and frightened by all these discussions that are going on before the 104th Congress.

We cannot lose sight of the fundamental fact that the United States has a unique obligation to our people. This obligation, the Federal Indian trust responsibility, is fundamental to the Federal Indian relationship and as such, the United States has a special, legally enforceable duty to ensure that its obligations are carried out.

We strongly support and welcome the opportunity developing provisions for direct funding to Indian tribes under consideration for consolidation into Federal block grants. This effort is consistent with the Federal Government's legal and fiduciary obligations to the tribes. Direct funding is consistent with the government-to-government relationship between the Indian tribes and the Federal Government.

Within the context of Indian self-determination and the self-governance compacting by tribal governments, enhancing the control of local governments over these programs is consistent with those principles. Block grants must support the unique role that tribal governments have in the Federal system. Our fundamental objective should be to preserve and maximize current resources to meet the needs of our people for which these resources are intended.

For those tribal governments which are too small or unable to administer specific Federally funded programs, special considerations must be given if the circumstances force them to rely on State governments to administer those programs for their tribal members. Like direct funding, contracting for State welfare services must be consistent with the spirit of self-determination and self-governance principles.

Mr. Chairman, I believe that it is necessary in this situation to declare a policy directing the States to enter into agreements and provide for a general framework to develop tailor-made arrangements. Congress should declare in this policy that the United States desires to preserve and protect American Indian tribe; that such policy be premised on the continuing role of the tribal governments in the American political fabric and that the United States has a responsibility to establish a legal framework to enable tribes and States to achieve maximum cooperation in the orderly administration of these programs.

In any Federal-State-tribal scheme, we must avoid any unnecessary complications as to the State's role in consulting, planning and contracting with tribes for these programs. Tribes under such a scheme should not be subject to compete for funds with political subdivisions of that particular State.

Another area of concern which must be addressed which may cause potential problems for the smaller tribe is the issue of State contracts which are based on cost reimbursement basis. The smaller tribes, especially, in New Mexico, do not have the funds for expenditures to be spent before they are reimbursed by the State.

I thank you, Mr. Chairman, for the opportunity to once again appear before this committee, and I wish you well. I know, I expected beautiful weather today, the flowers look beautiful out there. Yesterday when I left my home, I asked my wife should I bring my

topcoat. She said, you'd better not, it looks so pretty out there. But unfortunately, this morning, it's like 20 degrees below zero.

[Prepared statement of Mr. Early appears in appendix.]

The CHAIRMAN. Well, we'll try and shorten our questions so that you have time to get out and enjoy them.

It's nice to see with us also Representative Nick Salazar. It's good to have you with us, sir. Please proceed.

STATEMENT OF HON. NICK SALAZAR, STATE REPRESENTATIVE, STATE OF NEW MEXICO

Mr. SALAZAR. Thank you, Mr. Chairman, members of the committee.

My name is Nick Salazar. I'm a member of the House of Representatives in the State of New Mexico. My time in the legislature has been mostly spent in the appropriations committee, where I have served for the last 23 years. I offer this statement, As part of my testimony that might help you determine one way or the other, and maybe give you an insight on how I believe the State of New Mexico would be affected by the block granting of these programs.

In my 23 years as a member of the House of Representatives, I have come to understand and appreciate the complex set of legal principles that govern controversies between the tribes and the State as to which government has paramount authority in any particular situation. As a result, tribes and State regularly engage in complex, time-consuming and expensive litigation. Quite clearly, it is in the best interest of both the tribes and State to establish a better method of resolving jurisdictional conflicts.

I strongly support your efforts to involve the tribal governments in these discussions before any policy decisions are made. The New Mexico legislature fully supports direct funding to tribal governments. We believe that these efforts to enhance the control of local governments over the programs is consistent with self-determination. And I would hope that whatever comes out of the legislation here that the choice be left to, that there's enough flexibility in the legislation that the choice is left to the tribes to determine whether they want to contract with the State or run the programs themselves.

As Chairman Early has stated about any Federal-State- tribal scheme, I believe Congress must take this opportunity to declare a well-defined policy that enables the tribes and States to achieve maximum cooperation in the administration of these programs. This should be a guiding principles for the continuing role of tribal governments in the legal framework.

We recognize that without clear direction, Indian children and families fall through the jurisdictional gap between the tribal and State service agencies. And I think foster care was one that was mentioned here a while ago where there is a conflict in the State of New Mexico.

In 1983, Governor Anaya in his State of New Mexico address indicated that he wanted to take steps to deal with the tribal governments in a new manner. The Governor developed a process to establish government-to-government relationships with the Pueblos

and Indian tribes to develop a less combative approach to State-tribal relationships.

As a result, in 1984, the legislature amended the New Mexico Joint Powers Agreements Act to include an Indian Tribe or Pueblo in the definition of public agency under the terms of the act. The result is that no longer do the tribal governments have to go to the State legislature to come to terms on joint issues. Under the act, the tribes go to the State agencies, counties, municipalities and public corporations to hammer out agreements of mutual interest and could provide services to both Indian and non-Indian communities. As a result, the tribes approach the State and its political subdivisions on a government-to-government basis.

Under Governor Carruthers' administration, the State took another major step. A State-tribal-Federal task force on social welfare issues was established that resulted in a model Federal-State-tribal Protocol and Intergovernmental Agreements. The task force was set up by the State Human Services Department, the Albuquerque Area BIA and the Commission on Indian Affairs. Using the Intergovernmental Agreements has been the answer to accessing State and Federal resources. This type of agreement or protocol is developed according to the government-to-government policy. This approach fosters a collaborative working relationship in child welfare services that are of common concern and shared responsibilities.

However, even in the most ideal circumstances, Indian people continue to experience inequity in the quality and quantity of services available under the State-administered programs. This is largely as a result of a widespread feeling that Indian people are the responsibility of the Federal Government. For this reason, I feel strongly that Congress must declare a policy as to the role of the State in carrying out the Federal trust responsibility.

In a Federal-State-tribal scheme, the following are additional issues that need your attention for establishing the smooth administration of programs: the enforceability of agreements or contracts; the acceptance of jurisdictional forums for resolving disputes, such as issues or breach of agreement; the waiver of sovereign immunity; how to minimize infringement by the State, such as by forcing tribes through contracts to abide by the State standards or certifications as in the case of foster care parents, homes, and so forth, when tribes have their own; the insistence of States to bring or having exclusive custody of children or young adults before expending their "State" dollars; the State contracts operating on cost reimbursement.

Failure to address these issues can needlessly complicate tribal-State relations. Providing clarity in authorizing legislation of these shared responsibilities can result in moving us toward developing a true partnership of mutual concern for all our citizens of our respective States that can extend to others. The development of the inter-governmental agreements must build confidence between the tribes and the States to achieve mutual goals through improved relationships between our respective sovereign governments. The policy declaration should result in structuring a long-term process and context within which the tribal, State, and Federal Government entities can work together.

With a shared commitment, through agreements and protocols based on government-to-government principles, Indian citizens of the State will have access to the funds appropriated for their needs. Together we will develop human resources that we will collectively depend on for New Mexico's development. With such agreements that recognize tribal sovereignty and inclusion of tribal governments as full partners in providing services, we will serve the individual or family while building and strengthening community systems and preserve the cultural integrity of tribal communities.

With that, Mr. Chairman, thank you very much for the opportunity to submit my statement.

[Prepared statement of Mr. Salazar appears in appendix.]

The CHAIRMAN. Thank you very much, Representative Salazar. And I'd like to ask you and Chairman Early, there is some suggestion that smaller tribes are unable to administer programs for their tribal members, that States and tribes should enter into agreements that allow tribes to contract with the States to provide services to their tribal members. Do you feel that might work in the State of New Mexico?

Mr. EARLY. Mr. Chairman, I believe it would. I think we have several tribes out there who are so small they cannot afford the accounting systems that would be used to administer these type of direct block grants. The larger tribes, yes, we have no problem. Example, I have served at Laguna Pueblo as Governor for five terms, and we do have the correct type of accounting systems to administer any type of grant that may come down. We've been very successful in that, and in administering our 638 contracts throughout the years, and I think we're very capable.

But I do say that the smaller tribes would need help, and I think the State is willing. I think with the efforts of our representative, our good friend, Nick and others in the legislature who have been very helpful working with the area tribes.

The CHAIRMAN. Would it also not be a workable proposal to have the smaller tribes join in a kind of consortia and receive a block grant and then distribute it?

Mr. EARLY. Yes, sir; very possible. I think one avenue that I could pursue would be maybe funding to the All Indian Pueblo Council to administer those programs to the smaller tribes.

The CHAIRMAN. Representative Salazar, in your many years of service, have you seen conditions improve on the Indian reservations in your State, or become worse, or remain the same?

Mr. SALAZAR. I must say, Mr. Chairman, that within the last maybe 5 years or so, the Native American tribes have begun to prosper, thanks to the Gambling Regulatory Act, some of them have gotten into the gambling business, and are now beginning to prosper. They are setting up many businesses.

However, the Native Americans in New Mexico continues to be economically depressed, have the highest unemployment in the State, they continue to have the smallest per capita income in the State, they have the highest percentage of school students drop out of school and the list goes on and on.

I might also add that in the area of health care for instance, the State of New Mexico is studying and attempting to form some kind

of universal care for all New Mexicans in the State including Native Americans. For some reason or another, because of their health care, they get through IHS they were left out of the planning process. We also looked at what Congress was attempting to do in this area, and somehow they were not made a total part of the planning process either.

If you look deeply at health care for Native Americans, you would find there are no programs in the area of mental health or long-term care for the elderly. Mr. Chairman, you asked a question a while ago of a previous witness who gave testimony here, what would happen if this block grant fell short of the need since they don't have a mechanism in place to tax because in my understanding the block grants will not be increased on a year-to-year basis, but merely will be pretty much the same block grant for some time to come.

Mr. Chairman, having experienced this for many years, as chairman of the subcommittee on appropriations for Health and Human Services, and having witnessed how the Medicaid program has grown in the past few years, I can't imagine now whatever moneys are appropriated in the block grant program, if there isn't assistance from the State or other sources, these block grants will not be adequate in time to come. So I think jointly we will have to address some of those issues as we talk about block grants.

The CHAIRMAN. Thank you very much.

Commissioner Florhaug, have you had discussions with the tribe about uniform child support enforcement?

Mr. FLORHAUG. It's been an ongoing thing. I personally haven't been involved in that. I know the, I think the fraud investigator type, it's a cooperative type thing.

The CHAIRMAN. Chairman Whitefeather, since the county placed the social services office on your reservation, has there been a significant improvement in services to tribal members? Or has it made a difference?

Mr. WHITEFEATHER. Well, I believe, Mr. Chairman, it's had some positive impact. However, again, as was Stated by Commissioner Florhaug, it's difficult to get social workers that are of American Indian descent. And given the unique situation of the Red Lake lands, where our non-Indian employees cannot own land, they generally commute distances from 30 to 40 miles to come to work. And a lot of times what happens is when the doors close at 5 o'clock, so does the person and we don't see the person until the next morning, or perhaps, if it's on a weekend, on Monday. So there's a little bit of an issue there with continuity that some of the social service workers are not available as they otherwise would be in other types of settings.

But it has improved to some degree. However, not to the extent that we would like to see it.

The CHAIRMAN. I want to thank the witnesses, and thank you for coming today, and we appreciate very much your testimony. Thank you very much.

Our next panel is Mark Mercier, who is the chairman of the Confederated Tribes of the Grand Ronde Tribal Council; Joan Rebar, who is the chairperson of the Sac and Fox Nation, Reserve, KS;

Merle Boyd, the second chief of the Sac and Fox Nation, Stroud, OK. Please join us at the table.

I would like to State for the record, while the witnesses are seating themselves, that the committee invited the Department of Labor, Administration for Employment and Training, to appear at this hearing, and they did not respond to our request.

We'd like to begin with Chairman Mercier. Welcome.

STATEMENT OF MARK MERCIER, CHAIRMAN, CONFEDERATED TRIBE OF THE GRAND RONDE TRIBAL COUNCIL, GRAND RONDE, OR

Mr. MERCIER. Good morning, Mr. Chairman.

My name is Mark Mercier, I'm the tribal chairman for the Confederated Tribes of Grande Ronde in Western Oregon. And we're grateful for the opportunity to present testimony supporting tribal block grants, as part of Indian national welfare reform.

Our tribe was terminated in 1954, and was restored to Federal recognition in 1983. The consequences of termination resulted in poverty for a majority of our membership. In early 1984, we did a socioeconomic survey that showed our unemployment rate was 39 percent, and only 48 percent of our membership had high school diplomas. No doubt, our tribal council is dedicated to substantially reducing or eradicating those percentages.

The termination experience has also prompted us to seek the fullest expression of our powers of self-government. We strongly support the idea of flexible Federal funding for tribes, including welfare block grants.

With the BIA, we have entered into an unprecedented agreement called a Self-Determination Accord. This provides us the flexibility to provide the services as we see fit pertaining to our local circumstances. With the Indian Health Service, we have entered into a self-governance compact which we hope will give us the needed latitude to provide the kind of health care that our membership has determined we need.

I wish to point out to this committee that we wish not to spurn the Federal Government. Instead, it's our philosophy to explore ways to strengthen our sovereignty by building our government-to-government relationship on a cooperative basis with all levels of government. Our philosophy, our experience and the relationship we have with our membership makes us confident that we can capably administer flexible welfare block grants. Our membership looks to our governing body for guidance and assistance.

Make no mistake, for us, assistance does not mean long-term reliance or dependency. As a governing body, our council is familiar with the old Chinese expression, you can give a man a fish and let him eat if for a day, or you can teach him how to fish, and he can eat the rest of his life. Under the Accord of Self-Governance, we are redesigning these programs, which we hope will foster independence. We will require our membership to sign contracts for these types of assistance, with specific goals and standards, making it clear that we expect them to ultimately become productive and self-sufficient.

Mr. Chairman, we believe that Congress can help by passing legislation which will provide the needed flexibility for tribes to ad-

minister these block grant programs. We have some suggestions with key components regarding flexibility that cover four basic categories. Number one, tribes may or may not wish to operate programs now operated by States. Legislation should enable tribes to forge agreements with states if they opt to do so.

No. 2, flexibility for reporting and application requirements. No doubt, tribes are much smaller than states, and some may have less administrative capacity. Reporting and application requirements aimed at states may be very burdensome for some of these tribes.

No. 3, flexibility is needed for tribes to determine service population. While there are many large land-based tribes throughout the United States who may want to serve all the Indian people on or near their reservations, there are tribes in Western Oregon who have large, multi-county service areas as a result of being terminated and restored again. Now, many of these service areas overlap amongst many of the different tribes, and some of them include the major metropolitan areas in Oregon.

While serving the membership of their own tribes would not be difficult, it would be extremely difficult to provide services to all Indian people in these major metro areas since there is an enormous amount of population from other reservations and other communities from throughout the United States. So flexibility on service populations would address this, to let the tribes determine who they would be able to serve.

No. 4, we have previously heard that there are some tribes who are very small but located close to each other. And we are aware that they have formed consortiums to provide other types of services, health and welfare services and what have you. And so we would urge the Congress to provide that flexibility to give them the opportunity to provide services under these consortiums if tribes were wishing to do that.

So in my closing statement, I believe that the buzz word to all of this, Mr. Chairman, would be flexibility. And so with that, I wish to thank this committee for providing our tribe the opportunity to be present here today to express our views.

Thank you.

[Prepared statement of Mr. Mercier appears in appendix.]

The CHAIRMAN. Thank you very much, Chairman Mercier. I hope you won't mind when I quote you from your written statement, when you say, Mr. Chairman, we will have no difficulty putting welfare block grants to use in a more effective and efficient way than either a Federal or State agency has or could. I appreciate very much that statement, and I hope it's shared by the majority of the tribes. Because I think that's really what this should be all about. I appreciate that statement, and I appreciate your leadership of the Grande Ronde Tribe.

Joan Rebar, the chairperson, Chief of the Sac and Fox Nation. Welcome and thank you for being with us this morning.

STATEMENT OF JOAN REBAR, CHAIRWOMAN, SAC AND FOX NATION OF MISSOURI IN NEBRASKA AND KANSAS, ACCOMPANIED BY IDA NADEAU, UNITED TRIBES' DIRECTOR OF EMPLOYMENT AND TRAINING

Ms. REBAR. Thank you, Chairman McCain.

My name is Joan Rebar, and I'm the Chairperson of the Sac and Fox Nation of Missouri in Kansas and Nebraska. I'm testifying today on behalf of our involvement in two tribal consortiums that operate programs for several of the resident Kansas tribes. Accompanying me today and testifying separately is Ida Nadeau, United Tribes' Director of Employment and Training.

I wish to express our appreciation to Senator John McCain, the Chairman of the committee, and to the other members of the committee for holding these hearings today at this crucial juncture in determining how programs will operate in Indian Country. We are particularly appreciative of Senator Kassebaum and her staff for their interest and encouraging our participation at this hearing.

It is important, I think, to emphasize that the underlying principle is that tribes have a government-to-government relationship with the United States. This relationship is separate from the states and was designed in part to protect the tribes from the States. Although there are institutional, political and economic reasons, the record is clear that States have consistently failed to provide effective and adequate services to the tribes and Indian people.

Regarding the current debate on block grants and program consolidations, we need to recognize the unique Federal-Indian relationship, and the history of past failures when responsibility was shifted to the States. Along with other tribes and tribal organizations, we support the following principles with respect to welfare reform block grants:

A 3-percent set-aside to tribes from each program; development of formula distribution by the tribes and the Secretary of the Interior; direct funding for job training to tribes and tribal organizations; recognition of tribal court child support orders.

My Tribe, the Sac and Fox Nation of Missouri, is a small tribe with a population of 353 members, and a reservation area of 25 square miles in rural Kansas and Nebraska. Twenty-five years ago, the resident Kansas tribes realized that because of their small size, administering programs effectively would be difficult. Organizing multi-tribal consortiums was, and remains, in our view, a viable way to provide services to Indian people, enabling Indian individuals and families to become contributing members of their community.

One of the multi-tribal organizations, Native American Family Services, is a consortium of three tribes, two of whom extend into Nebraska. It provides a critical role in assisting and guiding state agencies and court systems with respect to the requirements and procedures of the Indian Child Welfare Act. Complying with the Indian Child Welfare Act's notice and preference placement directives is often unfamiliar territory and difficult for the states. Cultural values and heritage issues are often an intricate part of evaluating Indian children and their needs in a placement determination. Our

agency is better equipped as are tribal programs generally to provide these critical culturally sensitive services.

Direct provisions of funding to tribal programs, along with responsibilities, will reduce the duplicative and sometimes conflicting multi-county, and in our case, multi-state, licensing requirements for staff and foster care placement.

The second tribal consortium is United Tribes, which represents the Iowa and Sac and Fox, whose reservations are adjacent to each other. Its objectives are to promote and assist the development of cultural and social economic opportunities related to Indian tribes. It operates the USDA food distribution program, the Women, Infant and Children program, and the JTPA program. As noted earlier, Ida Nadeau, our JTPA Director, will describe our JTPA program.

In closing, I want to thank the committee for its efforts. I urge you to support amendments that provide for direct funding at the 3-percent set-aside levels for tribes, as well as other principles the other witnesses and I have endorsed.

Thank you.

[Prepared statement of Ms. Rebar appears in appendix.]

The CHAIRMAN. Thank you very much, Chairperson Rebar.

Ms. Nadeau, we have your complete statement for the record, if you'd like to make a statement.

STATEMENT OF IDA NADEAU, DIRECTOR, JTPA DIRECTOR, UNITED TRIBES OF KANSAS AND SOUTHEAST NEBRASKA, INC.

Ms. NADEAU. Thank you for the opportunity to talk briefly about our job training program. I'm sorry to hear that the Department of Labor declined your invitation. I think if you're going to look at welfare reform, you certainly have to look at employment and training programs.

The United Tribes' job training program covers 114 counties in 3 different States. And we're a relatively small program moneywise, in that we receive less than $500,000 a year. During the prior completed program year, nearly 67 percent of our clients terminating entered unsubsidized employment. And an additional 26 percent were either school dropouts who returned to full-time school, clients who entered a 4-year college program or joined some branch of the military. This was done at an average cost of $3,150 per participant.

This is only accomplished because as a direct Federal-funded program, we are able to determine at the local level the employment and training needs of our communities. And we feel this is essential if we're going to reduce poverty and unemployment within the Indian communities that we serve.

We have not always been this successful. In 1990, we had a 33-percent entered employment rate, which caused us to take a long look at what we were doing, and do some assessment. The first thing that we found, we were trying to make the reservation model the same as the State, we were trying to train people for the labor market demand for the entire State. And we found that the State labor market statistics had very little to do with the reservation or within driving distance of the reservation. And at that time, we started developing our own data labor market demand.

More importantly, we found that we needed to focus on quality, not the quantity, and to ask ourselves with each client what needs to be done, and what other social service programs and resources are available to make this person employable in a job that allows them to be independent of all social programs. We also came to the realization that we must not look at clients as individuals, but to look at the entire family. Many times an unemployed person thinks, if they just had a job, everything else would be solved. But it's hard to stay on a job if you're worried about child care, housing or many other problems that our clients have. Of the 7 percent of the clients who we are not successful with, let me assure you, it's always because we do not look at the entire family situation.

In putting together a training plan that enables Indian and Native American people to become productive members of the community, it is much easier to access those resources that the tribe has through direct Federal funding as opposed to the state resources. Therefore, I feel that it is essential for tribal governments and consortiums to receive an equitable share of Federal funds through direct funding to ensure that tribal innovation and flexibility is maintained as we strive to improve the quality of life for Indian and Native American people.

Thank you.

[Prepared statement of Ms. Nadeau appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Merle Boyd, who is the second chief of the Sac and Fox Nation, Stroud, OK. Perhaps for the record, before you begin your statement, you could describe the difference or relationship between the Sac and Fox Nation of Kansas and the Sac and Fox Nation of Oklahoma.

STATEMENT OF MERLE BOYD, SECOND CHIEF, SAC AND FOX NATION, STROUD, OK

Mr. BOYD. Senator McCain, that is a history lesson in itself, in that we were originally from the Great Lakes area. Through government intervention, we were moved to Oklahoma. A group that was being moved——

The CHAIRMAN. What year?

Mr. BOYD. In 1846, I think is the correct year, pretty close to that, we had settled in Kansas for about 1 year. And then we were moved on to Oklahoma. A portion of the tribe did not want to leave Kansas, opted to stay there, opted to develop a reservation there. But the majority were moved on to Oklahoma.

The CHAIRMAN. Both moves were forced moves?

Mr. BOYD. That's correct. And even the Sac and Fox that remained in Iowa sneaked back to Iowa, bought land on their own and created a reservation there. So all three tribes are placed at the discretion of the Government.

The CHAIRMAN. And all three tribes have a common family background?

Mr. BOYD. That's correct, the same language, the same heritages, the same beliefs and the same cultural beliefs.

The CHAIRMAN. That's very interesting. Thank you for clearing that up for the record. I'm sure that some day, someone is going to be reading this record and wonder why we had two different Sac

and Fox Tribes represented here at this hearing. So we welcome you, and please proceed with your testimony.

Mr. BOYD. Thank you. I know time is short. It's getting close to lunch. I'm not one to read testimony. Hopefully, the entire testimony will be put into the record.

The CHAIRMAN. Without objection, it shall be.

Mr. BOYD. I do want to talk about some high points that I feel are important to our nation. We are a tribe, a self-governance tribe. We're in our fourth year of self-governance with the BIA. We're in our third year of the self-governance with the Department of Health, IHS. We are in our third year of a prototype self-governance project with USDA, and are trying to develop a self-governance prototype with the Department of Housing and Urban Development, HUD, and hope to accomplish that within the year.

The CHAIRMAN. How are you doing?

Mr. BOYD. Doing real well. Doing very well. And in reference to block grants and what is submitted by the 104th Congress, we support the block grant concept in that it is basically what we've been trying to do for the last 4 years in self-governance. And that is to remove a lot of the layers of reporting, layers of bureaucracy, levels of agencies that are involved in regulating funds in behalf of individuals within the States.

But we do feel like we are, in our particular situation and I think all self-governance tribes, to go to the States on these block grants, creates a layer of reporting that self-governance is not into today, which involves, in our opinion, would create more bureaucracy than we're accustomed today under self-governance.

We would support a set-aside, specific to Indian tribes, to allow them to determine how they are going to administer those programs, whether it be under self-governance, 638 or in a consortium with tribes, or even if they opt to allow the State to administer those programs at that point. But I think it should be a choice of the tribes.

We do have the relationship with the U.S. Government on sovereignty, government-to-government relationship, and would hope that the House and the Senate would continue to recognize that as being a unique relationship that hopefully will be ongoing.

I will get to some of the notes I've underlined, only because it is very important that I discuss the food program, in particular, USDA, which is going to be jeopardized under this. Right now, we have the ability, because we are a tribal government, to access more variety of foods, we are using the status of a government entity to allow us to buy more diversity in foods.

The other thing is, if we go under a block grant system with the State, under our particular state's regulations, we are not allowed to access the food stamp program, and probably would not be, if we were put under the State as well, it would also diminish our ability to purchase foods, the diversity of foods that we're presently buying.

In closing, Senator, we do support the concept, we request a set-aside for tribes to determine their own destiny. Thank you.

[Prepared statement of Mr. Boyd appears in appendix.]

The CHAIRMAN. Well, thank you. And I appreciate you making the connection between self-determination and self-governance and

the block granting situation. I think there is a definite connection, and as you said, it's what you and a number of other tribal leaders have been striving for, to be able to administer your own programs with total independence, at the same time accountable to the members of your tribe, accountable as is every other governmental agency whose leaders are freely elected. And at the same time, better equipped to understand the needs of your tribes than some very dedicated people that happen to reside a very long ways away here in Washington, DC.

One question that I had for all the members, starting with you, Chairman Mercier, do tribal programs currently administered by the tribes serve tribal members living off the reservation, and non-tribal members living on the reservation?

Mr. MERCIER. In the past, specifically the Indian Health Service had tried to get our tribe, had attempted to get our tribe to cover the needs of all Indian people living within our service area, which covers a very broad area, six counties, to be exact. And so we told the Indian Health Service that, if you're going to require the tribe to do that, that we're going to need extra funding to provide the services, especially in the city of Portland.

There's a substantial amount of Indian people, to reiterate what I said earlier, from all over the United States, who have relocated there for whatever reason. And so at that time, they had backed off away from that. But that's something that we always have to keep an eye on, to see if the Federal Government will attempt to require tribes to do that.

The CHAIRMAN. Do you prefer to be called Chairperson Rebar, or chief?

Ms. REBAR. Chairperson.

The CHAIRMAN. Thank you. Would you respond to that question?

Ms. REBAR. In the social service area, that's a State-run program. And we operate our agency through their rules and regulations. In United Tribes, we have programs that are federally-funded, such as our commodities program, and we do service all Native Americans living on and off the reservation in our service area, and non-Indians living within our service area on reservation.

The CHAIRMAN. While we're on you, since your reservation extends to more than one State, do you find that this creates obstacles in administering or receiving welfare benefits?

Ms. REBAR. It does. Most of my tribe, the Sac and Fox Nation, lives in Nebraska. We currently, through our social service programs, have no licensing in Nebraska and cannot serve those people. So that doesn't get the attention it needs.

Some of the other programs that we offer, we go into three States, in our other consortium, and services a three-State area.

The CHAIRMAN. Does that cause difficulties when you're dealing with one State that has a different set of regulations?

Ms. REBAR. It would be much more difficult, and that's why we feel that if we had the opportunity to run our own programs, through our own regulations, that it would be much better to provide those services to those people. Plus, the quality of the service. Sometimes the State regulations don't conform to the unique situation that the Indian people have in regard to their religion and

their cultural beliefs that need to be taken into consideration before administering certain services.

The CHAIRMAN. Thank you very much.

Mr. Boyd, does your tribe administer programs to serve tribal members living off the reservation, and non-tribal members living on the reservation?

Mr. BOYD. In the area of Indian Health, yes. We do service any Indian that lives within our jurisdiction. And then on those tribal members that live outside of our jurisdiction, we have created a tribal fund that allows us to address those. They are not Federal dollars, but we do service our tribal members outside our own jurisdiction with non-tribal funds.

The CHAIRMAN. If I moved onto your reservation, would I be eligible to participate in tribal programs?

Mr. BOYD. In those areas that are specific to Indians, only if you had a Cetificate Degree of Indian Blood card, yes. On those that are not specific to, but just a general population, yes, you would be allowed to participate.

The CHAIRMAN. Chairperson Rebar, if I moved onto your reservation, would I be eligible for participation in tribal programs?

Ms. REBAR. If you met the Federal guidelines, yes. Definitely.

The CHAIRMAN. Chairman Mercier.

Mr. MERCIER. Our reply would be the same, too, that as long as they are a member of a federally-recognized tribe that we can provide the services.

The CHAIRMAN. I see. Well, I want to state for the record that the committee has received written testimony from the following tribes: Sauk Seattle, Eastern Band of Cherokee Nation, the San Juan Southern Paiute, and the Minnesota Chippewa Tribe. Their testimony will be made a part of the record.

[Referenced testimony appears in appendix.]

The CHAIRMAN. I want to thank you for your participation. I urge your continued participation when the issue of welfare reaches the floor of the Senate and we begin debate on the issues of how we will treat Indian tribes. I would appreciate your continued involvement, and I think that we have built a very strong record here today, to make sure you're not excluded from this process and from receiving the kinds of funding and concern necessary in order to be able to continue or better help Native Americans.

Thank you very much. This hearing is adjourned.

[Whereupon, at 11:50 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR, FROM MINNESOTA

Thank you Mr. Chairman. I would like to take this opportunity to commend you on your leadership in convening a meeting of this Committee to discuss "welfare reform" and "block grants."

As you so astutely observed on March 8, Indian country is concerned that the unique needs of Indian tribes will be ignored during the debate on block grants and welfare reform. As you have further noted, Indian country is also concerned that by promoting block grants the new majority in Congress intends to diminish the trust responsibility that the United States, have toward American Indians and Alaska Natives, and that some in the majority intend to use reform to undermine the government-to-government relationship between the United States and Indian tribes.

I too find it unfortunate that there are those who would choose to prophecy about impending disaster instead of constructively trying to find ways to include tribal governments in the welfare reform debate.

Finally, Mr. Chairman, I agree with you and the vice-chairman, that Indian issues are neither Republican nor Democratic. They are unique, human issues which call for bipartisan cooperation. By working together, and with the tribal leadership in Indian country, I believe the Congress will uphold the unique moral and constitutional relationship we have with Indian tribes.

PREPARED STATEMENT MARY JO BANE, ASSISTANT SECRETARY FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chairman McCain and members of the Committee, it is my pleasure to come before you today to discuss Federal funding to Indian Tribal governments for welfare and social service programs within the Administration for Children and Families. As the Assistant Secretary for Children and Families, I am responsible for administering over 60 programs that promote the economic and social well-being of families, children, individuals, and communities. I would like to take this time to describe briefly how Indian Tribes receive funding under these programs in order to give this committee a context for examining the impact of current welfare reform proposals on Indian Tribes.

There is a strong Administration commitment to address the critical issues that confront Tribes and Native American communities, as well as to help them achieve their social, economic, and governance objectives. President Clinton demonstrated his personal commitment when he met with Indian leaders from around the country to outline the principles that executive departments and agencies are to follow in their relationships with Tribal governments. As stated by the President, "the United States Government has a unique legal relationship with Native American Tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions."

This special relationship is based on Tribal sovereignty, Tribal right of self-governance, and the doctrine of a special Federal trust responsibility towards Tribes. Tribal sovereignty and Federal trust responsibility are indispensable components of the government-to-government relationship that must be preserved between Tribes and the United States government.

Our philosophy within ACF is to respect the right of self-determination and self-governance of all Tribes and Native American communities and organizations. Within this context, our goal is to provide assistance so Native American communities can become self-sufficient. We define a Native American community as self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

I believe it is fair to say that we have made significant progress in our efforts to be more responsive to the needs of Native American people. It is equally fair to say that much remains to be done, and to be learned about what should be done, to better serve the Native American community.

When I first became Assistant Secretary for Children and Families, I set out to establish a clear vision for our agency. We have articulated a vision that focuses our programs on:

- Empowering families and individuals to increase their own economic independence and productivity;
- Promoting strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Establishing partnerships with individuals, front-line service providers, communities, American Indian Tribes, Native communities, States, and Congress that produce solutions that transcend traditional agency boundaries;
- Planning, reforming, and integrating services to improve needed access; and
- Working with individuals with developmental disabilities, refugees, and migrants to address their needs, strengths, and abilities.

Among the numerous programs administered by ACF in support of this vision, tribes receive funding directly in some cases, and in others funding or services are provided through the States and localities. I am pleased that we were able to submit to this Committee last month our Phase I Report on an "Analysis of the Provision of Services to Native Americans by Programs within the Administration for Children and Families". The report provides brief abstracts on each of the major ACF programs providing funding or services to Tribes with funding level and dollar amounts to Native Americans, if available.

I will take this opportunity to highlight those programs that have specific funding allocations for Native Americans:

- In fiscal year 1995, three percent, or almost $28 million, is reserved for Indian Tribes under the Child Care and Development Block Grant program.
- Indian Head Start funding for fiscal year 1995 is slightly more than $105 million, just under three percent of the fiscal year funding level.
- Under the Family Preservation and Support Services program, $1.5 million, or one percent of the fiscal year 1995 funding, is set-aside for eligible Indian Tribes.
- The Family Violence Prevention and Services program has more than nine percent of the fiscal year funding, or $3 million, as the Indian set-aside for fiscal year 1995.
- Under the Community Services Block Grant program, almost $2.5 million is set aside for Tribes in fiscal year 1995.
- The Low Income Home Energy Assistance Program (LIHEAP) Indian set-aside for fiscal year 1995 (to date) is $13.6 million.
- The estimated Tribal allocation for the Job Opportunities and Basic Skills Training (JOBS) program is $9.1 million in fiscal year 1995.
- The Emergency Community Services Homeless Grant Program set-aside for Federally-recognized Indian Tribes in fiscal year 1995 is just under $300,000, or 1.5 percent of the appropriated funds.

In addition to these programs, the Administration for Native Americans (ANA) with a funding level of $38.4 million in fiscal year 1995, serves over 550 federally-recognized Tribes (including over 220 Alaska Native Tribal governments), about 60 Tribes that are State-recognized or seeking Federal recognition, Indian and Alaska Native organizations, Native Hawaiian communities, and Native populations throughout the Pacific Basin. ANA will use this funding to assist Native American

communities and their citizens to move further toward social and economic self-sufficiency.

In fiscal year 1994, ANA awarded 215 grants for governance, social, and economic development projects. These grants were used for the expansion and creation of businesses and jobs; youth leadership and entrepreneurship projects; tourism enterprises; shopping centers; diversified agricultural projects; cultural centers; the first Native American tour business; fisheries; energy and natural resource management; and fish and wildlife preservation—a vital necessity to support the traditional lifestyle and economies of the Tribes.

In contrast to these ACF programs that provide direct funding to Tribes, there are a number of ACF programs that provide funding directly to States and localities, and they in turn provide services to Tribes. For example, the Aid to Families with Dependent Children (AFDC) program, the nation's largest cash assistance program serving needy families with children, is funded jointly by the Federal and state governments. States receive funding directly from the Federal government and administer the program within broad Federal guidelines. Tribal members must apply for cash assistance through the State-administered AFDC program. Since this is an entitlement program, every individual applying for benefits, who meets the eligibility requirements of the State, is provided assistance.

We encourage each of our programs to address Native American needs by looking beyond the categorical boundaries and merging funds wherever permitted in the statute. Merging funds creates a concentration of resources to better address local problems with a more comprehensive initiative. Merging funds also administratively simplifies the grantee application process and reduces costs by allowing one agency to handle the review and approval.

The Administration for Native Americans has successfully merged funds from agencies within, as well as outside, the Department. For example, within the Department, several operating divisions are working together to reduce the incidence of Fetal Alcohol Syndrome and infant mortality among certain Tribes. Inter-agency agreements between ANA and the Bureau of Indian Affairs, the Environmental Protection Agency, and the Department of Commerce have assisted Tribes in diverse areas, such as environmental monitoring, resource utilization guidelines, assessments of Indian forest lands and forest management, and development of an intertribal communications network. Interagency agreements are a very flexible, powerful, and practical arrangement for concentrating the resources of government to meet the particular needs of the program's constituents.

In addition to focusing on funding mechanisms for Tribes, I would like to share some examples of situations in which Tribes have creatively used our funds to provide a comprehensive range of services. This Administration's vision for children and families is one in which communities bring together services and formal and informal supports for families in a way that is comprehensive and responsive to the unique strengths and unique needs of every family. The best Tribal child and family programs truly exemplify this vision: they do an extraordinary job of putting together services in a comprehensive way for children and families. For example, one Tribe in our Northwest Region put together a continuum of programs for young children and their families by linking a program for infants and toddlers funded by the Department of Education, a Head Start program, a Tribal school, and the Child Care and Development Block Grant child care program, which in that Tribe focused on family care for children of all ages.

Our job in the Federal government is to support Tribal governments in providing this kind of comprehensive and responsive array of services to meet child and family needs. We have worked in the past two years to strengthen our ability to provide this support:

- We held our national Tribal child care conference -the first one ever—in response to requests from our Tribal customers for a chance to share ideas and experiences. The second conference will be held this summer.
- We developed a partnership with Indian higher education institutions and the AmeriCorps national service initiative, to work together to recruit and train volunteers, many of them from the Tribal communities, to work in Head Start and child care programs in Indian communities.
- With support from this Committee, we have moved ahead to ensure that American Indian Head Start is a flagship component of our national Head Start program, exemplifying the emphasis on quality comprehensive services for young children and their families that is so central to the bipartisan Head Start reauthorization.

With this information providing the backdrop, I will now address the impact of welfare reform on funding to Tribes.

First, however, I must reiterate the Administration's strong support for enactment of real and effective welfare reform that promotes the basic values of work and responsibility. Last year, the President proposed a sweeping welfare reform package that embodies these values. It would have: established tough work requirements while providing opportunities for education, job training, and child care to working people; imposed tough child support enforcement measures; required teen mothers to live at home, stay in school, and identify their child's father; increased State flexibility and accountability; and maintained protections for children.

The Administration's welfare reform package reflected its commitment to Tribal government and its recognition of the unique needs of Tribal communities. For example, 1) it provided new opportunities for Tribal governments to participate in the JOBS program, 2) strengthened the funding of the Tribal JOBS program, 3) authorized Tribes to expend JOBS funds on economic development activities, 4) provided special flexibility for Tribes in administering the provisions of time-limited benefits and related work activities, and 5) gave Tribal governments access to title IV–A child care funds to support self-sufficiency efforts. These provisions and the other provisions in the Administration's bill recognized not just the principle of Tribal sovereignty and Tribal right to self-governance, but also the unique economic circumstances faced by Native American communities. The block grant approach, as envisioned in H.R. 4, falls far short of the basic goals and values that most Americans want welfare reform to promote. Unfortunately, the bill gets the values all wrong. It is too weak on moving people from welfare to work and too tough on innocent kids.

H.R. 4 relies on the States to solve the problems of requiring work and protecting children. It would completely scrap the shared State, Federal and Tribal partnership, cut funding, eliminate the State match, and block grant most programs. This would create a system in which opportunities and responsibilities could vary dramatically from one State to another. Where children may be protected in some States but not in others. Where accountability for the money that taxpayers pay into the Federal Treasury rests almost entirely with the States. Under this system, it is difficult to predict how Tribal members would fare.

Not only would the bill block grant most programs to the States, but it would remove current Tribal funding set-asides for ACF programs, with the exception of the Child Care and Development Block Grant. Current statutory Tribal set-asides for programs, such as JOBS and Family Preservation and Family Support, would be eliminated. Therefore, even in situations where Tribes currently receive direct funding, services would be provided by the States using their block grant funds.

I look forward to working with this Committee to build upon our support of Native American self-governance, economic development, and self-sufficiency. We will work closely with Native American leaders as we proceed with Phase II of our report to this Committee on the development of a plan, including legislative recommendations, to allow Tribes and other Native American organizations to consolidate grants administered by our department. In addition, as ACF programs come before the Congress, we will examine with you the appropriateness of incorporating provisions to allow direct funding for Tribes.

I would be happy to answer any questions at this time.

PREPARED STATEMENT OF BOBBY WHITEFEATHER, CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS

Good morning, Chairman McCain and Committee members, I am Bobby Whitefeather, Chairman of the Red Lake Band of Chippewa Indians - State of Minnesota. I am pleased to testify here today on behalf of the Red Lake Band regarding welfare reform. The Red Lake Band has a long and unique history of involvement in reforming the manner in which social services are provided for Tribal members living on the Red Lake Indian Reservation. Red Lake has been involved in reforming both the local administration of welfare services as well as in efforts to reform the system of welfare assistance at the national level. Reforming the national welfare system is an important endeavor which will affect every tribe. It is important, therefore, that any efforts at reform directly address the needs of tribal governments.

The Red Lake Band commends Chairman McCain and Senators Inouye, Campbell, Thomas and Simon for introducing and sponsoring S. 285, a bill which authorizes tribal governments to contract for or receive grants for title XX funds directly from the federal government. This legislation addresses a fundamental flaw Red Lake Enterprises: Red Lake Sawmill, Red Lake Fishing Industry, Red Lake Bingo, Red Lake Builders, Chippewa Trading Post, Red Lake & Ponemah in the system,

which currently provides for grants directly to States only. S. 285 is a meaningful step in the direction of giving tribal governments the much needed authority to provide sufficient welfare services to its members. However, S. 285 addresses only title XX funds. Action needs to be taken to empower tribes to manage the broad spectrum of social services encompassed in welfare reform. Solutions to the unreasonably high levels of poverty, hunger and unemployment facing Indian country today can only be found by authorizing Tribal governments to design, manage and operate their own social service programs.

The Red Lake Band has a unique and long history of working with Federal, State and county governments to provide social services to its members. In 1965 the Beltrami County Welfare Department opened a branch office in the Bureau of Indian Affairs Red Lake Agency building. This was a monumental step forward in providing services to Red Lake residents. Since that time, the Red Lake Band, Beltrami County and the BIA have worked together to establish guidelines and to outline responsilzilities for the delivery of human services to residents of the Reservation.

The Red Lake Band is in a unique position among Tribes interested in reforming welfare because it has already initiated discussions with County and State officials in efforts to reform the current methods of Human Services Administration. In 1993, discussions began between Red Lake and Beltrami County about ways to change the administrative structure of social service programs affecting members of the Red Lake Band living on the reservation. Under current law, the county is responsible for administering many of the social welfare programs benefiting members of the band. The county has expressed a sincere desire to be relieved of the responsibility of providing services to Band members for financial and other reasons. We have, therefore, engaged in dialogue to explore other options of administering the services needed on the reservation.

The county's main concerns in continuing to operate these services are the program and administrative costs. While much of the costs are reimbursed by the federal and state governments, there is still a portion of these costs which is incurred directly by the County. County property tax revenues are used to pay the costs incurred directly by the County in providing services to members of the Red Lake Band. Because the Red Lake Reservation land has never been allotted and therefore is not taxable, the Band does not make any direct contribution to the overall property tax base for the County. The County argues that this arrangement is unfair because the Reservation accounts for a significant portion of the land in Beltrami County.

It should be noted that the Tribe does contribute significantly to the commercial activity of Beltrami County. The Red Lake Reservation attracts to and churns within Beltrami County a significant amount of money in the form of jobs, procurement of goods, and provision of services. In addition, much of the public assistance benefits are spent by Red Lake consumers in Beltrami County commerce. This boost in economic activity within Beltrami County enhances property values upon which the County levies its property tax. Nevertheless, it is the perception of some residents of the County that it provides the Reservation with services and receives nothing in return.

The lack of stable funding from the State is also a motivating factor for the County in wanting to alter the current administration of welfare services. Each year it becomes more and more difficult to secure reimbursement through the State. In recent years it has become increasingly difficult to obtain sufficient funding from the State to reimburse the County. There is every indication that this situation will only get more difficult in the years to come. The fear of less and less reimbursement from the State is a deep concern for the County and a concern of the tribe's in the event that it takes on the County's responsibilities.

Red Lake is currently engaging a dialogue with the County and meetings are ongoing. The State Department of Health and Human Services is also involved in this dialogue. The initial goal is to identify the problems within the current system and develop strategies to improve upon this system. We all agree that we are working toward the same goal which is to provide better services in the most economically efficient way possible and in a manner which meets the unique needs of Indians living on the Reservation. Under current federal law, however, there is no opportunity for the County or State to transfer federal funding or administrative responsibilities to the Tribe.

The failure of the current welfare assistance system can be seen across all of Indian country, as well as at Red Lake. Poverty, unemployment, alcohol and substance abuse, juvenile delinquency, and out-of-home placement of children occur at rates among Native Americans that are well above that of the general population. One-half of all Indian children under the age of 6 live in poverty. 50% of the female headed families in Indian country live in poverty. The national rate is 31.1%, signifi-

cantly lower than the figures in Indian country. These statistics evidence a broad failure of the current system in addressing the welfare needs of Indians. These rates are estimated to be even higher on the Red Lake Indian Reservation. In 1989, about 70% of female headed families were living in poverty. The unemployment rate is estimated to be about 50% on the Reservation. Change is needed in order to address these unacceptably high rates of poverty and unemployment. Tribes are in the best position to determine what change is needed and to devise strategies to address the overwhelming needs of their people.

At Red Lake, the federal, state, and county governments fund most of the programs provided, and the County has primary responsibility for administering the programs. There are numerous problems in the administration of the welfare system. Social workers are overwhelmed by a large caseload. They are unable, therefore, to provide the quality and types of services needed by Indians on the Reservation. Tribal programs relate most effectively to economically disadvantaged clients on a flexible, person-to-person, face-to-face basis. The administrative structure that characterizes state and county-administered programs is often at odds with the type of programs which could be successful on our Reservation.

The current social services system in Red Lake is overwhelmed with high demand and expanding need for services. For example, lack of appropriate resources and inadequate staffing patterns lead to a higher portion of out of home placements. Foster care is one of the largest social services expenses on the Reservation. If access to additional services and staff were available, we believe the delivery system could be more efficient and could provide better quality services to Red Lake families. In 1988 the Department of Health and Human Services and the Department of the Interior commissioned a study which produced a report entitled *Indian Child Welfare: A Status Report*. The report concluded that Tribal child welfare programs were, in many ways, outperforming state systems. The community based services created to serve the needs of Indians residing on the reservation were found to be more effective than state services even though the Tribes faced an unstable budget with inadequate funding. The study pointed out, as an example proving its finding, that Indian children placed by state and BIA agencies are more often placed outside of their homes, in more restrictive placements, and stay in substitute care longer than Caucasian children.

In addition to the inadequacies of services currently being provided, there is also the problem that the funding of services remains uncertain year to year. The State is becoming less reliable every year in its appropriations for welfare services for Indians at Red Lake. The County is actively seeking a way to diminish its responsibilities in administering programs. While funds are available through the IHS, they are primarily for substance abuse only. BIA funds are intended for last resort assistance and one-time emergency; situations. In the current system, Red Lake is strapped by administrative bureaucracy and unable to fully resolve the quandary in which it finds itself. Legislation which would provide the Tribe with the authority and sufficient funding to operate its own programs would provide the Tribe with a monumental opportunity to begin to find creative and efficient solutions to the problems faced by its members.

Meaningful reform of the welfare system as it pertains to Indians will only be accomplished with legislation which provides the authority and funding necessary for tribal governments to contract for or receive grants to operate their own welfare programs. Many of the proposals being discussed regarding welfare reform include creating more block grant programs to be made available to states, similar to the way Title XX is currently distributed. Under these conditions, Tribal governments are often squeezed out and provided no funds at all. This is evidenced by the recent report issued by the Office of the Inspector General which revealed that 15 of the 24 states with the largest Native American populations failed to provide Title XX funds to Indian tribes between 1989 and 1993. The report concluded that Tribes did not receive funding because Title XX currently does not provide funds directly to Tribes and because states are not required or encouraged to share the funds they receive with Tribes. It is, therefore, critical that provisions in the final welfare legislation include authority for tribes to receive direct funding from the federal government to operate social service programs. Otherwise tribes will be left with little or no funding to provide social services to an already under served population.

It is vitally important, however, that flexibility and choice for Tribal governments be built into the system. Tribes should be given the option to manage their own programs. Each Tribe is thereby empowered to make the decision best for its people. Some tribes may contract with the State or County to provide services. Other tribes may pay non-profit organizations to manage and administer their program. Many tribes, such as Red Lake, will run the programs themselves. This flexibility allows tribal governments to determine what is best for their members. Each tribe is dif-

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ferent, with varying needs, priorities and conditions. Each tribe must decide for itself how the services are to be provided.

Red Lake also supports the fundamental goal of tribal control of resources. Control by tribal governments over welfare programs offers the best hope that tribaly members' reliance on those benefits will be transitional and of maximum value, because tribe governments can tailor the welfare program and enhance incentives that are culturally and socially appropriate as well as target social services directly at the need in an efficient manner. Tribe control allows for the adaption of programs as needs on the reservation change. Finally, tribe governments are in the best position to determine what the needs of their members are and how to design programs best suited to meet those needs. Federal, state, and even county governments are too far removed from the realities of life in Indian country to be capable of designing programs which would meet the unique needs of each Tribe.

By affirming and supporting the authority of tribes to design their own social service systems tribe family values will be fostered and tribes will be allowed to take the maximum advantage of local and regional resources. Empowering tribes to create workable solutions to the welfare problems they face is the best hope of solving the overwhelming problems of poverty and unemployment in Indian country.

Finally, legislation authorizing tribes to manage their own social service programs has the potential to assist the Red T ake Band and Beltrami County in finding a long lasting solution to the dilemmas we face in redesigning the administration of our current welfare assistance program. Such legislation would be consistent with the efforts we have made thus far and would facilitate the reaching of an agreement.–S. 285 is a meaningful step in that direction and is just the type of legislation we have been working toward since the beginning of our recent efforts in 1993.

While the Red Lake Band fully supports the efforts of this Committee to make available direct resources to Tribes to operate their own welfare programs, there are some remaining concerns about such a policy. With the general wave of fiscal restraint and the House efforts at reforming welfare, there is some concern that tribes will be given the authority to manage their own welfare programs but will then be stripped of the resources necessary to operate those programs. States and Counties have a tax base and other resources upon which to draw to provide these necessary programs. Most tribes do not have such resources and would then be unable to provide the services so critically needed on their reservations. In order for this endeavor to be successful, there needs to be an insured commitment at the federal level to provide adequate funding resources to tribes for the operation of social service programs on the Reservation. The Red Lake Band applauds this Committee's efforts, but also requests that the Committee assist the tribes in safeguarding the resources necessary to make such legislation a success.

Red Lake is also very concerned about the negative restrictions being discussed in the welfare reform debate. Because of the unique conditions on reservations and in Indian country generally, federal direction to states and tribes mandating requirements and penalties is not appropriate. For example, the unemployment rate is very high in Indian country and in Red lSe, as discussed earlier in my testimony. Requirements that certain percentages of recipients of assistance be engaged in work activities would be unrealistic and unattainable for most tribe governments. Along with the authority and funding to manage programs, Tribal governments will need flenbility to implement solutions uniquely designed to meet their specific needs.

A final concern for Red Lake regards the definition of "Tribal Organization" in S. 285 and any future legislation which gives Tribes the authority and funding to manage their own social service programs. The definition of "Tribal Organization" in S. 285 mirrors the definition of Indian Organization in the Indian Self–Determination and Education Act, P.L. 93–638. The current regulations governing P.L. 93–638 have further defined Tribal Organization to require that "a request for a contract must be made by the tnbe that will receive services under the contract" and to require that "in cases where a contract is let to an organization to perform services benefiting more—than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such a contract." 25 C.F.R. sec. 271.2. We would request that this Committee include similar statutory language clarifying the intent of S. 285 and any future legislation regarding the eligibility of tribe organizations to receive funds from the total amounts set-aside for Indians. Such clarification would protect the integrity of the intent of the legislation to empower tribal governments to operate their own social service programs.

In conclusion, I would like to thank the Committee for this opportunity to express my tribe's views on the issues surrounding welfare reform.

PREPARED STATEMENT OF RICHARD P. FLORHAUG, COUNTY COMMISSIONER DISTRICT 4, BELTRAMI COUNTY, MN

Good morning, Chairman McCain and other Committee members, I am Dick Florhaug, County Commissioner for District 4, Beltrami County, MN, which includes the Red Lake Reservation. I am pleased to testify here today on behalf of Beltrami County regarding welfare reform. Beltrami County is committed to reforming the way in which services are provided to the residents of our County. Reform is an important endeavor which will affect every County and Indian Tribe in the United States. When I was chair of the Beltrami County Board of Commissioners in 1993, I helped initiate a new effort to collaborate with the Red Lake Band to realign services for the Red Lake Band members living on the Reservation. I want to state for the record Beltrami County stands steadfastly in support of the Red Lake Band's position presented to this Committee today. As a partner with the Red Lake Band, Beltrami County understands that tribal governments must not be left out of the process and that their needs should be directly addressed. Beltami County commends Chairman McCain and Senators Inouye, Campbell, Thomas and Simon for considering new approaches to empower Tribal governments to lead and direct their own destiny in the battle against the conditions of poverty, hunger, and unemployment on reservations.

Beltrami County has worked for many years with the Red Lake Band to provide services to its members. In 1965, the Beltrami County Human Services Department opened branch office in the Bureau of Indian Affairs Red Lake Agency building. Since that time, the Red Lake Band, Beltrami County and the BIA have worked together to establish guidelines and outline responsibilities for the distribution of services to residents of the Reservation. Beltrami County continues to maintain a Red Lake office with a staff of eight financial assistance workers. The County also contracts with the Band for additional services that are provided by Tribal personnel.

Beltrami County's main concerns in continuing to operate these services are the program and administrative costs. While much of the costs are reimbursed by the federal and state governments, there is still a portion of these costs which is incurred directly by the County. In State Fiscal Year 1994, this was approximately $367,000. Those costs could reach one-half a million dollars this year; a significant burden for a County having the size and economic condition of Beltrami County, where 71% of acreage within the County is tax exempt due to government and tribal ownership. County property tax revenues are used to pay the costs incurred directly by the County in providing services to members of the Red Lake Band. Because the Red Lake Reservation land is unalloted and, therefore is not taxable, the Band makes no direct contribution to the overall property tax base for the County despite the Band owning 20% of the land mass in Beltrami County.

Beltrami County agrees completely that the Red Lake Band contributes significantly to the commercial activity of the County through additional jobs, goods being purchased, services being provided, moneys being spent in businesses, and property values being enhanced resulting in additional revenues to the County. Nevertheless, many persons in Beltrami County have the false perception that the County provides the Reservation with services and receives nothing in return. The combination of increasing property tax revenues to pay for a portion of Red Lake services and the false perception of Red Lake contributing nothing in return has raised tensions in the community.

The chaotic revenue changes being discussed at the Minnesota State Legislature, including proposals to freeze property taxes and market values, aggravate Beltrami County's precarious financial situation in funding the additional costs needed for Red Lake services. The possibility of increased State funding seems bleak. In recent years, Beltrami County Commissioners have had to struggle in order to obtain funding from the State Legislature to reimburse the County for such costs. A full reimbursement has not been possible to date. The 1995 State Legislature is shifting more and more responsibilities, without accompanying funding, to the County, thus supporting the proposition that the County's funding problems will only continue to get more difficult in the years to come. The fear of less and less reimbursement from the State for costs of services to Red Lake residents is of deep concern for the County.

Beltrami County's discussions with the Red Lake Band and the Minnesota Department of Human Services are ongoing. The County is committed to rethinking how services should be provided and funded. Beltrami County and the Red Lake Band are working toward the same goal which is to provide services which meet the unique needs of Indians living on the Reservation in the most cost effective

manner possible. The current federal law does not provide the tools to Beltrami County and the Red Lake Band to reach this very important goal.

Obstacles and difficulties exist under the present service delivery system. Beltrami County, as a whole, evidences extreme poverty and unemployment levels. Twenty-four percent (24%) of the population falls below the Federal poverty level and unemployment levels are over nine percent (9%). Over fifteen percent (15%) of the County's population are receiving public assistance. The problems on the Red Lake Reservation are even more severe. The rate of poverty is twice that of the County as a whole, forty-nine percent (49.5%), and unemployment affects half of the available work force, so, not surprisingly, forty-six percent (46%) of all households are receiving public assistance.

In spite of the many years of mutual effort to increase cultural awareness, to better appreciate cultural diversity and to promote understanding, there is still a gulf that exists between the Indian and the non–Indian community. This gulf widens whenever public debate focuses on the use of scarce resources.

There are several practical obstacles that get in the way of the County delivering services to the people of the Red Lake Band. Like many Reservations in other parts of the country, Red Lake is geographically isolated from the economic, social, and service centers within the County. People on the Red Lake Reservation lack access to many of the services, in both the public and private sector, that are available to the majority of County residents. The County also faces difficulties in recruiting and retaining Indian employees. The County's experiments at contracting with the Band for services have been much more successful, and provide the added benefit of giving managerial control over programs to tribal administrators.

The County contracts with the Band for family based and child protection services, fraud investigation, and home health care services. The outcomes from these contracts include Indian family based workers being able to assist Indian families to prevent out of home placements; Indian child protection workers being able to protect Indian children from harm while still working to keep their families unified and intact; Indian fraud investigators immersed in their own culture being able to fairly deal with Indian persons having fraud issues, holding them accountable, and recovering funds for ineligible payments made that would otherwise be lost; and Indian health care workers providing case management, homemaking, and personal care services to tribal elders and disabled persons.

Another major difficulty with the County providing services on the Reservation is somewhat unique to Red Lake. The unalloted or closed" status of the Reservation, and the fact that Red Lake opted out of Public Law 280 have left open many issues that rest on legal jurisdiction. For example, Red Lake has its own Tribal Codes governing child protection matters and a Tribal Court system that has jurisdiction over those cases. Beltrami County follows state law and State District Court hears the cases. Neither has jurisdiction over the other, yet the County has overall responsibility for providing child protection services on the Reservation. Similarly, Red Lake has its own social service department which provides many services that are identical to those of the County. This has created some confusion over the roles and responsibilities of the two governments. Operating under these dual systems has created administrative complexities, bureaucratic burdens for families and social workers, and inefficiencies at meeting the needs of the people of the Red Lake Band.

The failure of the current system of welfare assistance is obvious to Beltrami County both in Indian country and in counties. Poverty, unemployment, alcohol and substance abuse, juvenile delinquency, and out-of-home placement of children are rising. Workers are overwhelmed by large caseloads. The broad failure of the current system in addressing the welfare needs is evident. Change is needed in order to address these unacceptably high rates of poverty? and unemployment. A critical element of a new approach would be to have tribes, since they are in the best position to determine what changes are needed, devise the strategies to address the overwhelming needs of their people.

Beltrami County supports new legislation, including Senate Bill 285 introduced by Chairman McCain, which will provide the authority necessary for Tribal governments to contract for, or receive grants, to operate their own programs. The focused efforts, flexibility in providing services, cultural friendliness, and streamlining of process that will result from Tribal governments running their own programs will lead to a better future for counties and tribes. Beltrami County applauds the Committee's efforts and asks for your support for direct transfers of funds to Tribal governments. This support must not only include this direct transfer concept, but also assurances that funds provided are adequate to meet the needs for services that exist accompanied by the necessary flexibility to get the job done. Adequate funds are flexibility and critical to the success of this legislation. You have Beltrami County's assurances that the County will, in turn, support the efforts of the Red Lake

Band to make full use of this opportunity. We are already collaborating with the tribal government through our existing contracts with the Band and through our efforts to help them develop their own screening and review processes for child protective services. We are prepared to provide any needed technical support and expertise in a transition from County-operated to Tribal-operated services. The Minnesota Department of Human Services has also made a commitment to work with the County and the Reservation on long-range planning of human services. It seems to me that all of the governments, Federal, Tribal, State and County, have a unique opportunity to forge a partnership that could have a positive and lasting impact on Indian people.

Thank you for this opportunity to testify before you today.

PREPARED STATEMENT OF THOMAS ATCITTY, VICE PRESIDENT, NAVAJO NATION

The Navajo Nation appreciates this opportunity to provide comments and recommendations regarding welfare reform to the Senate Committee on Indian Affairs. The Navajo Nation is pleased to take advantage of this important opportunity to address the unique and diverse needs of the Navajo Nation and other Indian tribes whose members participate in some form of federal welfare programs.

The Navajo Nation generally supports the idea that welfare reform is necessary; however, we are concerned that Senate Welfare Reform proposal and House passed H.R. 1214, the Personal Responsibility Act, as currently drafted, (1) does not adequately address how the "block-granting" principle will apply to Indian tribal governments and (2) does not appropriately consider the special government-to-government relationship between Indian tribes and the Federal government (ie. treaty obligation and trust responsibility). Current welfare reform proposals proposes to reduce the size of the nation's welfare system, reduce out-of-wedlock births, and expand state flexibility in addressing welfare programs, but the Navajo Nation is deeply concerned that these proposals threaten to alter the management and control of some tribal welfare programs that are already administered by Indian tribes. Additionally, the Navajo Nation fears that these welfare reform proposals have the potential to hinder the Navajo Nation's efforts to address the welfare needs of the Navajo Nation. While the issue at hand is a complex one, the Navajo Nation strongly believes that any future congressional welfare reform proposals, must explicitly address the needs and concerns of Indian tribes.

Our comments today will (1) highlight the Navajo Nation's unique socio-economic demographics, (2) outline the Navajo Nation's efforts to meet the needs of its people, (3) identify the various welfare programs that are currently administered on the Navajo Nation and describe their impact on Navajo welfare recipients, (4) state the Navajo Nation's view on the concept of Welfare Reform and (5) interpret the potential outcome of proposed specific provisions included in H.R. 1214 on the Navajo Nation and provide recommendations to improve these provisions

The Navajo Nation is the largest and most populous Indian tribe in the United States with an estimated 219,000 members. The Navajo Nation encompasses 17.5 million acres, spanning the states of Arizona, New Mexico and Utah—one-third of all Indian lands in the lower 48 states. The Navajo Nation is larger than the states of Connecticut, Delaware, Maryland, Massachusetts, and Rhode Island combined. Given our geographical composition, the Navajo Nation often encounters complex jurisdiction issues in regard to implementation of state and tribal programs, such as natural resource management, environmental protection and economic development.

The Navajo Nation is a sovereign government with an expansive tripartite structure, composed of executive, legislative, and judicial branches. The functions of each branch of government are similar to that of the federal government: the legislative branch creates laws, the executive branch implements the laws, and the judicial branch interprets the laws. The Navajo Nation has a President and Vice-President (executive), who are elected by the Navajo people, as are the 88 members of the Navajo Nation Council (legislative), while the Chief Justice (judicial) is appointed by the President and confirmed by the Council.

Although the Navajo Nation is rich in natural resources and possesses tremendous economic potential, socio-economic conditions on the Navajo Nation are comparable to those found in underdeveloped third world countries. According to the 1990 U. S. Census, approximately one-half of our people residing on or near the Navajo reservation are below the age of 21; and the Navajo population is growing at twice the national rate. Additionally, in 1992, a survey published by the Department of Health and Human Services' Indian Health Service (IHS) reported that approximately 15 percent of the Navajo population is under 6 years of age and indicated that the population growth is expected to continue with the Navajo Nation

birth rate determined at 3.25 percent. This is twice as high compared to the 1987 U.S. birth rate of 1.57 percent.

A majority of Navajo families maintain extended family relationships often living in groups which include grandparents, uncles, aunts, cousins, nephews, nieces, and other "clan-related" individuals. Navajo children are raised within this secure network of people who care for them and contribute to their education and social well-being, including the teaching of the Navajo language, sacred Navajo traditional beliefs and observance of cultural values. However, this unique system of child development has begun to deteriorate due to many external influences. Some Navajo families are drifting apart as some members must follow economic and "formal" education opportunities not available near their homes.

The size of the Navajo reservation coupled with our population boom, demands the expansion and improvement of the educational system serving Navajo children. Educational statistics for Navajo students (such as measures of achievement, school completion, and college attendance) indicate performance levels far below those associated with America's worst urban and rural educational systems. The schools serving Navajo children—primarily Bureau of Indian Affairs' schools, and public schools under the jurisdiction of states of Arizona, New Mexico and Utah—offer inconsistent and often culturally-insensitive curricula, and simply do not provide Navajo students with the educational and social opportunities that they need and deserve. As a result, some Navajos who pursue higher education opportunities do not complete their studies as they are either academically ill prepared, (primarily due to limited English language proficiency) or they experience difficulties in adjusting to a new disparate setting.

To worsen matters, the Navajo Nation government and its people do not possess the requisite authority to address the bulk of these problems arising from the unique three-state geographical/jurisdictional status of the Navajo Nation.

The Navajo Nation is characterized by *unemployment levels ranging from 36 to 50 percent* depending on the season; per capita income averages $4,106.00, and over 56 percent of our people live below the poverty level. High unemployment on the reservation is the underlying reason that many Navajo families are disjointed, a result of family members being forced to relocate to nearby urban areas to find jobs. Private-sector businesses are non-existent on the Navajo reservation. Family members who cannot find employment or provide adequate care and basic needs for their children experience stress, depression, and frustration. The consequences are illustrated by the increasing levels of child abuse and neglect, alcoholism, drug and substance abuse and depression.

Currently, the scarcity of adequate housing on the Navajo Nation is at a magnitude that can be characterized as a "housing crisis." The Navajo Nation has determined that 13,539 *newly constructed homes* are needed immediately to alleviate severe overcrowding. Additionally, many existing houses are in disrepair. The Navajo Nation estimates that 23,527 existing housing units on the Navajo Nation are in substandard condition because they lack either running water, indoor plumbing, electricity and/or central heating. Essentially, approximately 62 percent of housing on the Navajo Nation requires significant improvement, in addition, to a continued extensive home building program.

Basic "necessities" of life, taken for granted elsewhere in America, are sorely lacking on the Navajo Nation: 77 percent of Navajo homes lack plumbing, 72 percent lack kitchen facilities, and 76 percent lack telephone service; 35.1 percent of Navajo families (12,907 households) presently haul water from windmills or springs to meet their basic domestic water needs. Many of these domestic water systems were constructed prior to passage of the Clean Water Act, and therefore without adherence to, strict standards of water quality and well-head protection required by U.S. Environmental Protection Agency.

Many of the social and economic conditions referenced above are directly attributable to an enormous infrastructure deficit. The Navajo Nation is committed to resolving all issues hindering the development of Navajo communities and families Limited opportunities, and underdevelopment in most essential areas such as health, education, social services, and economic development will undoubtedly continue unless the Navajo Nation responds with the necessary knowledge, skills, and tools to make those important decisions to strengthen the Navajo Nation However, the Navajo Nation's response is in large part dictated by federal programs.

The Navajo Division of Social Services actively provides services such as child protective services, child care, adult in-home care, specialized child care, and Indian Child Welfare Act program. The Navajo Division of Health provides many nutrition related services such as Food Distribution program and Women, Infant and Children (WIC) program The Division of Human Resources provides employment training programs such as Job Opportunities and Basic Skills (JOBS) program. The Nav-

ajo Nation's Division of Community Development and the Navajo Housing Authority currently administer all of the programs responsible for upgrading and renovating existing homes as well as new housing construction All these Navajo Divisions are contributing to the well being of the Navajo people with the limited financial resources that are available from tribal, state and federal governments.

The Navajo Nation has played a leadership role in related efforts to foster an environment conducive to growing the Navajo economy (and those of other Indian reservations). The Navajo Nation initially proposed, and thereafter devoted substantial resources to advocating successfully, the first-ever, reservation-based Indian Investment and Employment Tax Incentives (enacted as Sections 13321 and 13322 of the Omnibus Budget Reconciliation Act of 1993) to attract private sector investment and jobs to Indian country. Recently, we have played an active role before the Congress to extend to Indian country its fair share of the benefits that may be realized under President Clinton's Community Development Banking legislation; and before Congress and the Federal financial supervisory agencies seeking to reform the implementation and enforcement of the Community Reinvestment Act so that Indian reservations are no longer left behind, or left out altogether from the rural banking lending/services that the law was designed to encourage. Additionally, we drafted language incorporated into the recent Goals 2000 legislation to focus research on the special educational needs of American Indians, and we are working with Congress and the Administration to extend to Indian reservations many of the same types of economic development opportunities now designated for empowerment zones.

As stated in the introduction, the Navajo Nation generally supports the idea that welfare reform is necessary. In this context, the Navajo Nation strongly believes that the following principles must be incorporated into any Welfare Reform proposal considered by Congress:

Trust Responsibility: Welfare Reform initiatives must be consistent with the federal government's trust responsibility to Indian tribes. The Federal trust responsibility was recently reaffirmed by the President for all Federal agencies.

Equity: Welfare Reform initiatives must provide the Navajo Nation access to the same levels of benefits and funding as other Americans and state governments.

Tribal **Control and Management:** Welfare Reform initiatives must recognize that the Navajo Nation has the right to determine its own welfare programs to address its people's needs. The concepts of self-determination, self-governance, and a government-to-government relationship are crucial to the Navajo Nation. Further, during the 103rd Congress, the Indian Self–Determination Contract Reform Act of 1994 (Public Law 101–413) was passed indicating congressional support for these concepts.

Self-Sufficiency: Welfare Reform initiatives must acknowledge the Navajo Nation's right to develop its welfare programs to meet its own definition of self sufficiency based on the respective communities' available resources.

Unfortunately, thus far, most discussion on Welfare Reform does not address the four fundamental principles listed above, nor indicate how Congress plans to address the needs of Indian tribes. For this reason, *the Navajo Nation strongly recommends that Congress offer special attention and consideration to Indian tribal governments.*

Tribes as Self-Determining Governments

The Navajo Nation strongly believes that Indian tribes are the best authorities in determining the management and goals of their welfare programs. Tribes are increasing their capabilities to develop and properly manage such programs. It is for these reasons, that the Navajo Nation strongly advocates that, for funding purposes all Federal agencies should be given full authority to enter into direct contracts and grants with Indian tribes (rather than passing these programs and funds through the States). *Congress should continue to recognize and enhance the government-to-government relationship that exists between tribes and the Federal Government.* In order to fulfill its trust responsibility, the Federal Government must ensure that Indian tribes have the means to exercise their sovereign authority over their welfare programs. Indian tribes should, therefore, be authorized to participate fully in federally funded programs, while keeping an awareness of the unique tribal concerns and challenges. The most obvious methodology to achieve this is through a general amendment to Public Law 93–638, as amended, the Indian Self-Determination and Education Assistance Act. This amendment would expand Public Law 93–638 to all Federal agencies; not only the Department of the Interior and the Department of Health and Human Services.

Like states, some Indian tribes administer their own welfare programs. The Navajo Nation administers it own General Assistance Program through a P.L. 93–638 contract to assist Navajo families who do not qualify for any type of state or feder-

ally-funded financial assistance programs. The Navajo Nation also administers such programs as Women Infant and Children (WIC), Food Distribution program, and Job Opportunity and Basic Skills (JOBS) through direct federal funding. The Navajo Nation has developed these programs to meet specific Navajo needs successfully.

The Navajo Nation recognizes that not all Indian tribes have the capabilities to administer welfare programs. However, the true goal of any welfare reform proposal should be to enhance tribal self-determination and support Indian tribes in their efforts to develop and implement their own welfare programs to meet their particular and individual needs. Indian tribes must have the flexibility to design a welfare program what would meet the complex and unique needs of Indian people.

Block grants to States—Indian Set-aside

As the Welfare Reform debate continues, the Navajo Nation believes that the State "blockgranting" principle is garnering support and is thereby greatly concerned that the leverage of Indian tribes to determine how best to utilize the available amount of resources will be dramatically decreased if States are given authority to administer all federal welfare programs. The Navajo Nation fears some States may (1) receive an allocation less than the identified need, (2) not include all eligible welfare recipients in its programs, and (3) not provide and direct an equitable amount of the available dollars toward Indian tribes. One example illustrates the type of concerns the block granting approach raises: when the Social Security Act's Title XX block grants were created, the State of New Mexico subcontracted with the Navajo Nation on a number of services. However, the State's allocation of funding was clearly discriminatory—depriving Navajo individuals of needed services. While the situation was ultimately rectified, it was necessary to sue the State of New Mexico—a case which finally went to the United States Supreme Court, before it was concluded.

Therefore, *for funding purposes only. the Navajo Nation strongly recommends that Congress adopt a 5 percent "set-aside" for Indian tribes from the total amount of dollars to be appropriated to States. to serve Indian welfare recipients.* Fairly flexible waiver provisions must also accompany the funding to Indian tribes. The Navajo Nation feels that by securing a "pot of money" for exclusive use by Indian tribal governments to address welfare needs, the Navajo Nation and other Indian tribes are in a better position to ensure that available dollars are meeting the true needs of the targeted population.

Aid to Families with Dependent Children (AFDC) Block Grant

In many welfare reform proposals, States will receive AFDC funding through block grant measures "to carry out any program established by the State to provide benefits to needy families with dependent children." One condition is that the block grant will be frozen at 103 percent for fiscal year 1994 funding levels with no adjustment for inflation and minor adjustment for population growth.

The Navajo Nation opposes States receiving AFDC block grants that would authorize States the flexibility to redesign their AFDC program and possibly alter eligibility criteria unless there is a requirement for appropriate tribal input and participation in developing these criteria. Currently, there are some eligible Navajo people, residing on the reservation, who do not receive welfare benefits that many States administer. Some States overlook serving tribal areas or providing services to tribal governments, taking the position that serving the Navajo Nation and other Indian tribes is a "federal issue." State officials are "discouraged" by the language barriers involved with assisting Navajo people for welfare benefits and the remoteness of the Navajo reservation in follow-up services. In effect, this type of response only increases the poverty level for many Navajo families and forces the Navajo Nation and Indian tribes to provide assistance with their limited resources. It also demonstrates the difficulties which would be exacerbated by increased State control. The Navajo Nation is in the best position to assist its own people.

Increased flexibility would allow States much discretion in determining services it provides and the groups that are eligible for these services. States would also determine the percentage of funds that will support service provisions such as training, planning, and technical assistance. Under these circumstances, Navajo Nation and state governments' interpretation would differ regarding service delivery to the Navajos. State-tribal relationships would again be strained due to minimal funding for direct services and technical assistance. In essence, the inequitable treatment that would occur further impedes state-tribal relations. The Navajo Nation has demonstrated its ability to *affectively* serve its reservation. Therefore, the option to administer AFDC should be made available to Indian tribes with fairly flexible waivers and technical assistance to accommodate the unique tribal structure.

Recommendation

Should Congress pursue block grant measures, we strongly recommend that the Navajo Nation, along with other Indian tribes, must receive direct funding, authorizing us to receive AFDC funding to administer its own AFDC program. Additionally, Congress could expand the scope of application of P.L. 93-638, as amended, to encompass all Federal agencies. Either option would allow the Navajo Nation, and other Indian tribes, the flexibility to design its welfare program and coordinate the AFDC program with existing programs. Alternatively, we recommend that states be mandated to specifically include the needs of Indian tribes and urban Indians as they are also citizens of respective states.

Cap on Growth of Federal Spending of Welfare Programs

Federal spending caps on several low-income programs such as AFDC, SSI, low-income housing programs, child support enforcement programs, at-risk child care subsidies and the proposed work program would conflict with Navajo Nation's efforts to stimulate its economy. It would further thwart individual efforts to move off welfare rolls. Moreover, federal spending caps would terminate the entitlement status of low-income programs whose funding level would thereafter be determined during the annual Federal appropriations process.

The Navajo Nation strongly opposes placing a Federal spending cap on low-income programs and terminating the entitlement status on spending for these programs. Spending caps will severely reduce many low-income programs in which Navajo people currently participate and would increase the risk of Navajo welfare recipients losing their welfare benefits. More than any other change, this has the potential to negatively impact Federal trust responsibility. While it is unclear what the impact will be on such programs as the Adult Institutional Care, and Child Welfare Assistance, it seems that these programs will be dramatically affected either through the loss of their entitlement status or through proposed rescissions as Congress addresses the Federal budget.

Proposed funding levels coupled with the eligibility criteria puts tremendous pressure on the tribal General Assistance program. Navajo AFDC participants' eligibility would be terminated. They are then forced to seek assistance elsewhere, such as our tribal General Assistance program. This program's participation level would likely increase two or three-fold. To worsen matters, the proposed BIA reorganization effort would move the program into the Tribal Priority Allocation fund resulting in a federal spending cap. This action jeopardizes limited opportunities of Navajo people who need financial assistance. Moreover, it conflicts with the purpose of AFDC and the program which is to provide assistance to needy families so that children in these families may be cared for in our homes or in the homes of relatives.

Recommendation

The Navajo Nation recommends that if federal spending caps are to be implemented, the level must be designated so that it will not severely impact low-income programs. These programs serve mostly our children, young mothers, elderly, and disabled.

Denial of AFDC and Housing Benefits to Children, Young Mothers and Families

Some welfare reform proposals would deny AFDC and/or housing benefits to young mothers, children who fail to establish paternity and are born out-of-wedlock; despite the cooperation of all parties involved.

The Navajo Nation strongly opposes the denial of welfare and housing benefits to Navajo children, young mothers and families. By denying AFDC and housing benefits, this proposal fails to recognize the social and cultural importance of children to our people. The Navajo Nation views Navajo children as its most valued resource. Children represent the continued existence and integrity of the Navajo Nation. In this context, these provisions are senseless and negates this important cultural element.

Denial of benefits discriminate against the socio-economic status of children, young mothers and families. Children should not be punished for the economic circumstances of their parents. In some cases, welfare benefits are a Navajo family's only means of support. Should Navajo families fail to receive financial assistance, these families will separate. In effect, these sections will separate families risking the child's eligibility to receive benefits from any other source.

In the Navajo extended family, children are accepted as part of the family and/or tribal clan and, more importantly, are not stigmatized by their parent's marital status. However, if a Navajo child is placed with an extended family member, the family will experience financial difficulties in supporting these children. If families,

who support these children, fail to receive additional assistance, the family will be penalized for its traditional life style.

These proposals further penalize Navajo families from receiving housing benefits and add to the difficulties of obtaining housing. The Navajo Housing Authority (NHA) and Navajo Housing Services (NHS) manage and provide low-income housing to Navajo families. Currently, NHA and NHS programs' waiting lists for homes will be dramatically reduced because Navajo families are ineligible. Navajo families will separate and experience involuntary displacement. Overcrowding of homes will factor into the increasing homelessness, adding to the Navajo Nations housing crisis.

Recommendation

The Navajo Nation recommends that each child and young mother receive AFDC and housing benefits. Many Navajo families will become homeless and Navajo families will have to involuntarily separate.

Work Program

Many welfare reform proposals mandate welfare recipients to participate in a work program with varying work activities. The Navajo Nation opposes the work requirement because the reservation lacks jobs and employment opportunities We disagree with the States' authority to impose sanctions, to determine satisfactory participation and to reduce benefits of the individuals. Navajo individuals required to participate in the work program will encounter many difficulties in participating due to the nature of the reservation economy; thereby, increasing the States' opportunities to sanction or terminate an individual's benefits. States will find it difficult to operate a work program on reservation because of the lack of infrastructure to house the program Many of these programs will then be located off reservation, in border towns, thereby presenting transportation problems.

Many Navajos must travel great distances for work Many of our people do not own a vehicle or have extra spending money to purchase gas for the round trip. To get to a work program, an individual must obtain a vehicle or ride with a relative and coordinate their work schedule with a relative's daily activity In many cases, schedules will not coincide, which leaves many individuals without transportation. Lack of transportation combined with the work hours would not equal the benefits received, but would further discourage many individuals from participating. The States would reduce, and eventually terminate the benefits, because the individual failed to "satisfactorily" participate in the program due to factors beyond their control

Recommendation

The Navajo Nation recommends that Indian people who reside on reservation be exempt from the work program because they will loose their benefits.

Time Limit Provisions

Welfare reform proposals would place time limits on AFDC benefits to a family for a total of 60 months (five years); thereafter, the family is permanently removed from welfare rolls Time limits would further limit education and training services to a maximum of 24 months Time limit provisions do not exempt minors, the elderly, mentally or physically disabled, and persons responsible for an incapacitated family member.

The Navajo Nation opposes the time limits provision outlined in existing proposals as it would disproportionately impact Navajo people. Time limits penalize Navajo individuals who are actively seeking employment in an unusually depressed economy. The short time period imposes extreme hardship on an individual to search for a job in an area with a particularly high unemployment rate. In effect, the individual and family will exhaust its' welfare benefits with little or no alternative, increasing our people's chances of becoming destitute. Essentially, time limits penalize people for residing on their homeland.

Time limits threaten the Navajo Nation's efforts to stimulate its' economy. The drafters of the bill assume that our reservation provides adequate employment opportunities and regular public transportation. As noted above, the Navajo area has scarce economic development to provide jobs due to the lack of infrastructure (paved roads, private sector business, banks, etc.). Essentially, time limits imposed without providing work opportunities would worsen the position of many vulnerable Navajo families.

Time limits hinder education and training opportunities for Navajo people to improve their personal skills and abilities. Our people already experience limited formal education and language barriers that prevent many of them from obtaining employment and seeking educational opportunities off the reservation It also imposes

requirements on existing education and training programs to abide by a time limit like JOBS. The Navajo JOBS program provides education and training to AFDC individuals who are functionally illiterate and assists them by providing limited child care services. The JOBS program is one of the limited programs Navajo AFDC recipients have to participate in education and training programs Since these time limits will reduce the window of opportunity to participants in training programs, time limits combined with the proposed federal spending cap would create an increasingly unskilled Navajo work force.

Recommendation

We strongly recommend that Navajo Nation, and other Indian tribes, be exempt from the time limit provision as it will devastate us. State control of time limit provisions must include appropriate safeguards for Indian tribes. Despite savings States would receive from revamping the AFDC program, in the long-term, time limits would severely impact collection of third party reimbursements of Medicare and Medicaid funding by IBS and Indian tribes. Third party reimbursements provide funding to hire additional medical and health staff. The Navajo Area IHS would loose approximately one quarter of its existing staff, which is 600 full-time equivalents (FTE). This FTE reduction, in addition to the high unemployment rate, and limited job training opportunities would further increase the unemployment rate and leave many Navajo families destitute.

Child Welfare & Child Care Block Grants

Under existing welfare reform proposals, States would be authorized to expedite adoption and foster care placements regardless of race or national origin of the parent or child involved. States would also determine eligibility of families for child care and protection services like those involved in Title XX of the Social Security Act.

The Navajo Nation opposes State control of this matter, unless the unique position of Indian tribes are considered It would have a negative impact on Navajo children who reside in both rural and urban areas. Some States fail to recognize the identity of our children and disregard the provisions of the Indian Child Welfare Act that provide Indian children rights and places the child with their respective family member or relative. Consequently, our children would either be adopted by non-Navajo families or placed under the guardianship of the State. These State programs infringe upon Federal law and the rights of the child. Our children will be emotionally scarred if this provision is adopted without specific safeguards to tribal interests.

Indian tribes do not receive direct funding from Title XX; however, S. 285, a bill that would provide Indian tribes a percentage of total funding is consistent with the self determination policy. The funding would provide Indian tribes resources for social services programs to enhance and promote independence. The bill would allow the Department of Health and Human Services to make contracts or grants to Indian tribes. Access to Title XX funding provide flexibility to locally design and administer social services programs. The funding would also compliment existing services provided by the Navajo Division of Social Services.

Recommendation

The Navajo Nation recommends that all States be mandated to create an Indian Child Welfare Office that would effectively identify Indian children, and refer them to the appropriate tribal Indian Child Welfare program. In that respect, the our children will be returned to their families and/or clans. Furthermore, the Senate should favorably approve S. 285 that would provide valuable resources to Indian tribe's in addressing each tribes respective concerns whether it is child care or child abuse.

Food Assistance Block Grant Program

In an early House welfare reform proposal, it recommended establishing a food assistance block grant program, which includes "tribal organizations," and merges federal food assistance programs. The provision would provide a reserved percentage of grants to "tribal organizations" that have governmental jurisdiction over geographically defined areas and shall be allocated equitably by the Secretary of Agriculture among such organizations. The measure also requires that States, and presumably "tribal organizations," adopt minimum allocation formulas for certain categories of expenditures and minimum work requirements.

The Navajo Nation opposes the block grant approach and merging Federal food assistance programs that would include Food Stamps, WIC, "Meals-On-Wheels" and school lunch programs. The proposed .24 percent set-aside amount for "tribal organi-

zations" fails to adequately provide funding for food and nutrition programs the Navajo Nation currently administers, and the additional food programs proposed. Due to our unique reservation economy, the Navajo Nation opposes the minimum allocation formula that would require a certain percentage of expenditures and minimum work requirements because it would increase existing hardships experienced by our people.

The block grant measure would severely reduce funding levels of current programs such as: WIC, Food Stamps, commodity foods, and merging food assistance programs would obstruct the Navajo Nation's current management of food and nutrition programs. The proposed funding level will be too inadequate to accommodate more food programs especially with minimum allocation requirements. Moreover, reduced funding threatens the employment of current program employees, in a climate where unemployment is already high. Consequently, a decrease in the funding level infringes upon the Navajo Nation's efforts to meet the basic needs of its people.

The Navajo Nation opposes the repeal of the Food Stamp program and the termination of its entitlement status. States would be authorized to redefine the eligibility criteria and accept only those who qualify for food stamps, potentially excluding many recipients. The States would also designate sites where vouchers could be exchanged and possibly rule out convenience stores. For many Navajo families, convenience stores are often the only accessible stores to meet their needs because most grocery stores are located off-reservation, usually in border towns. Additionally, the proposals fail to specify how States would implement cuts; thereby, greatly decreasing the likelihood of our current efforts to establish a Navajo Nation Food Stamp Office. Tribal input is critical given the unique economic conditions faced by our Nation. There must be some quantity of tribal involvement, both to determine tribal needs and to fulfill the Federal responsibility.

Some eligible Navajo people already failed to receive food stamps. The Food Stamp program which is administered by States provides benefits to approximately 67,955 recipients. Yet, that figure compared to 120,000 (56 percent) individuals who live below the poverty level indicates that 52,045 eligible individuals fail to receive benefits. Under Federal control of Food Stamps, we do not possess minimal food purchasing power, State control of Food Stamps minimizes the opportunity for minimal food purchasing power. The Navajo Nation Food Stamp Office will assist many eligible families by providing a source to obtain food purchasing power, safeguarding their health, and raising their nutrition level.

Recommendation

The Navajo Nation recommends that tribes continue to receive direct federal funding for food and nutrition programs at a 5% set-aside of appropriations of Food Assistance Programs. We also recommend that the tribes and the Secretary of Agriculture work together and define the allocation formulas for expenditures and work requirements as they pertain to Indian country.

We further recommend that the Senate welfare reform bill include a provision that would allow us to administer our own food stamp program on a demonstration basis. We, with the Secretary of Agriculture would then negotiate the budget, quality control structures, technical assistance and the like as it pertains to the tribe. This provision would allow us and the Federal government an opportunity to meet the needs of the our people.

This program could provide a uniform system (electronic debit card) and simplify requirements on eligibility criteria for Navajo people who reside in three States. It could enable us to coordinate our nutrition and food supplement services with the Food Stamp program. Additionally, it could provide employment opportunities for our people. Such a program would determine its eligibility criteria, applicable to the unique family structure of our people, and promote self-sufficiency, well-being and employment. The Navajo Nation has the basic infrastructure to administer Food Stamps and has demonstrated effective management of food and nutrition programs such as WIC for over ten years.

Child Support Enforcement Block Grant

In H.R. 1214, Title VII, Child Support, expands the scope of current federal child support enforcement laws, and would assist child support collection efforts throughout the United States. While the Navajo Nation is supportive of enforcement enhancement, a number of issues may become troublesome should the Congress provide for direct federal funding to Indian tribes.

Perhaps the largest potential impediment to direct funding is the general requirement of a matching amount. As with many federal and state programs, it can be

very difficult to provide an adequate local match, particularly for tribal governments.

As well, the strengthened requirements contained, for example, in Sections 711 and 713 (State case registry and State directory of new hires respectively) may be onerous for tribal governments, because of the rural nature of most reservations, particularly given the strict reporting requirements. While to a degree, the automated data processing requirements of Section 745 could provide some relief, some recognition should be given to the rural nature of most tribes and the uneven quality of infrastructural development.

Recommendation

One potential avenue to enhance a tribal government's ability to implement a service, like a child support enforcement program, is to provide for realistic and broad authority for the Secretary to waive some portions of this proposed act. This waiver authority could then be exercised to allow tribal governments to develop appropriate service delivery systems.

Drug Testing For Welfare Recipients

Some welfare reform proposals provide States the authority to determine who shall participate in drug or substance abuse treatment as a condition to receipt of welfare benefits. States would have the authority to determine what is an appropriate treatment program and satisfactory participation of the individual.

This type of measure would provide enormous authority to States to determine who is an addict and what is considered an appropriate treatment program and "satisfactory" participation. While the Navajo Nation supports treatment for substance abusers, we do not support giving States the broad latitude to make many of these determinations with respect to tribal populations without tribal involvement. Substance abuse is a disease. The Navajo Nation is concerned that recognition of alternative, cultural, and traditional methods of substance abuse treatment will be overlooked. Lack of recognition would increase prospects of our people losing benefits because our recipients choose a traditional method of treatment.

The Navajo Nation's Department of Behavioral Health Services provides out-patient counseling for substance abuse through a holistic approach. This holistic approach attempts to heal the person's mind, body, and spirit by using a traditional Navajo medicine person and counselor. Often, a client's family is involved. Many of our clients prefer the holistic approach because it utilizes our language and culture to bring the abuser into harmony with himself, other people and the world. The Navajo Nation believes that this holistic approach is the most effective method for substance abuse; however, a shortage of qualified counselors and resources prevents additional outreach of the more isolated communities. Without recognition of these factors, State-controlled programs would dismiss an appropriate, effective treatment modality.

Recommendation

We recommend that IHS and other tribes provide input on treatment of substance abuse because IHS and tribes have the knowledge and experience of reservation life and the existing treatments of substance abuse. Additionally, States must be mandated to recognize alternative, cultural and traditional methods of substance abuse treatment. Moreover, tribes and IHS must continue to receive adequate funding for personnel and other resources.

For all the reasons we have discussed above, we urge Congress to clarify congressional intent of Indian tribes and tribal organizations as it pertains to Welfare Reform. Existing proposals such as proposed H.R. 1214, the Personal Responsibility Act's application to the Navajo Nation would be devastating to our families and children and will have not accomplished deterrence from welfare rolls. Rather it would further increase poverty. The impact will disproportionately affect and disparately impact our people. We urge Congressional members to seriously consider our comments and recommendations and effectively respond to the needs of the our people.

The bill must acknowledge Indian tribes as distinct sovereign governments with the authority to participate and administer several federally funded programs. We have demonstrated our efforts to move forward and stimulate our economy and create jobs. We also wants to continue administering and controlling our federally funded programs, including welfare programs. We know the needs of our people and understand many of the problems experienced by our residents. However, we need the financial support to effectively respond to the needs and concerns of our people. Options such as expansion of P.L. 93–638, as amended, and a set-aside funding process would further the policy of self-determination and the government-to-government relationship. Federal trust responsibility and treaty obligations can then be

preserved while increasing local control and efficiency; however, to achieve these we will require amendments to the bill that would reflect the unique position of tribes.

We appreciate the opportunity to provide our comments and recommendations on welfare reform. We urge the Committee members and other Congressional members to extend their commitment to supporting us in our efforts to become self sufficient.

PREPARED STATEMENT OF HARRY EARLY, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL

Mr. Chairman, it is an honor an a privilege to appear before you today to present testimony on behalf of the 19 Pueblos of New Mexico. The Pueblo people sent you their blessings and their greetings as you deliberate over these matters that affect their lives.

Our primary concern in these discussions of block grants is that Congress not diminish the trust responsibility it has to our people and that reform does not undermine tribal sovereignty and the government to government relationship between the United States and Indian Tribes.

Mr. Chairman and members of the Committee, I want to express my appreciation for giving us an opportunity to be part of this discussion before any policy decisions are made. Our Tribal Leaders and Indian people are confused and frightened by all these discussions.

We cannot lose sight of the fundamental fact that the United States has a unique obligation to our people. This obligation, the federal Indian trust responsibility is fundamental to the federal Indian relationship and as such, the United States has a special, legally enforceable duty to ensure that its obligations are carried out.

We strongly support and welcome the opportunity for developing provisions for direct funding to Indian tribes under consideration for consolidation into federal block grants. This effort is consistent with the federal government's legal and fiduciary obligations to tribes. Direct funding is consistent with the government to government relationship between the Indian tribes and the federal government.

Within the context of Indian self-determination and the self-governance compacting by tribal governments, enhancing the control of local governments over these programs is consistent with those principles. Block grants must support the unique role that tribal governments have in the federal system. Our fundamental objective should be to preserve and maximize current resources to meet the needs of our people for which those resources are intended.

For those tribal governments which are too small or unable to administer specific federally funded programs, special considerations must be given if the circumstances force them to rely on State governments to administer those programs for their tribal members. Like direct funding, contracting for state welfare services must be consistent with the spirit of self-determination and self governance principles.

I believe that it is necessary in this situation to declare a policy directing states to enter into agreements and provide for a general framework to develop tailor made agreements. Congress should declare in this policy that the United States desires to preserve and protect American Indian tribes; that such policy be premised on the continuing role of tribal governments in the American political fabric and that the United States has a responsibility to establish a legal framework to enable tribes and states to achieve maximum cooperation in the orderly administration of these programs.

In any federal-state-tribal scheme we must avoid any unnecessary complications as to the state's role in consulting, planning and contracting with tribes for these programs. Tribes under such a scheme should not be subjected to compete for funds with political subdivisions of the state.

Another area of concern which must be addressed which may cause potential problems for the smaller tribes is the issue of state contracts which are based on cost reimbursement basis. The smaller tribes do not have the funds for expenditures before they are reimbursed.

I now want to turn to the Honorable Representative Nick Salazar, one of the ranking and senior legislators, one of our best friends and advocate to give you a state perspective.

PREPARED STATEMENT OF NICK SALAZAR, STATE REPRESENTATIVE, NEW MEXICO

In my 18 years as a member of the New Mexico House of Representatives, I have come to understand and appreciate the complex set of legal principles that govern controversies between tribes and the state as to which government has paramount authority in any particular situation. As a result, tribes and states regularly engage in complex, time consuming and expensive litigation. Quite dearly, it is in the inter-

est of both the tribes and the states to establish a better method of resolving jurisdictional conflicts.

I strongly support your efforts to involve the tribal governments in these discussions before any policy decisions are made. The New Mexico legislature fully supports direct funding to tribal governments. We believe that these efforts to enhance the control of local governments over these programs is consistent with self-determination.

As Chairman Early has stated about any federal-state tribal scheme, I believe that Congress must take this opportunity to declare a well-defined policy that enables the tribes and states to achieve maximum cooperation in the administration of these programs. This should be a guiding principle for the continuing role of tribal governments in the legal framework.

We recognize that without clear direction, Indian children and families fall through the jurisdictional gap between the tribal and state service agencies.

In 1983, Governor Anaya in his State-of-the-State address indicated that he wanted to take steps to deal with tribal governments in a new manner. The Governor developed a process to establish a government-to-government relationship with the Pueblos and Indian tribes to develop a less combative approach to state-tribal relationships.

As a result, in 1984, the legislature amended the New Mexico Joint Powers Agreement Act to include "an Indian Tribe or Pueblo" in the definition of "public agency" under the terms of the Act. The result is that no longer do tribal governments have to go to the state legislature to come to terms on joint issues. Under the Act, the tribes can go to state agencies, counties, municipalities and public corporations to hammer out agreements of mutual interest that could provide services to both Indian and non-Indian communities. As a result, the tribes approach the state and its political subdivisions on a government-to-government basis.

Under Governor Carruther's administration, the state took another major step. A state-tribal-federal task force on social welfare issues was established that resulted in a model federal-state-tribal Protocol and Intergovernmental Agreements. The task force was set up by the state Human Services Department, the Albuquerque Area BIA and the Commission on Indian Affairs.

Using intergovernmental agreements has been the answer to accessing state and federal resources. This type of agreement or protocol is developed according to the government-to-government policy. This approach fosters a collaborative working relationship in child welfare services that are of common concern and shared responsibilities.

However, even in the most ideal circumstances, Indian people continue to experience inequity in the quality and quantity of services available under state-administered programs. This is largely the result of a widespread feeling that Indian people are the responsibility of the federal government. For this reason I feel strongly that Congress must declare a policy as to the role of the state in carrying out the federal trust responsibility.

In a federal-state-tribal scheme, the following are additional issues that need your attention for establishing the smooth administration of programs:

- The enforceability of agreements or contracts.
- The acceptance of a jurisdictional forum for resolving disputes, such as issues of breach of agreement.
- The waiver of sovereign immunity.
- How to minimize infringement by the state, such as by forcing tribes through contracts to abide by state standards or certification as in the case of foster care parents, homes, and so forth, when tribes have their own.
- The insistence of states to having exclusive custody of children or young adults before expanding "state" dollars.
- State contracts operating on cost-reimbursement.

Failure to address these issues can needlessly complicate state-tribal relations. Providing clarity in authorizing legislation of these shared responsibilities can result in moving us toward developing a true partnership of mutual concern for all our citizens of our respective states that can extend to others. The development of intergovernmental agreements must build confidence between the tribes and the states to achieve mutual goals through improved relationships between our respective sovereign governments. The policy declaration should result in structuring a long-term process and context within which the tribal, state, and federal governments entities can work together.

With a shared commitment, through agreements and protocol based on government-to-government principles, Indian citizens of the state will have access to the

funds appropriated for their needs. Together we will develop human resources that we will collectively depend on for New Mexico's development. With such agreements that recognize tribal sovereignty and inclusion of tribal governments as full partners in providing services, we will serve the individual or family while building and strengthening community systems and preserve the cultural integrity of tribal communities.

Mr. Chairman, I have with me copies for the record of state-tribal agreements as well as a copy of our Joint Powers Agreement Act. That concludes my testimony. Thank you.

PREPARED STATEMENT OF MARK MERCIER, TRIBAL CHAIRMAN, CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

Mr. Chairman, members of the Committee, good afternoon. I am Mark Mercier, Chairman of the Confederated Tribes of the Grand Ronde Community of Oregon. It is my pleasure to be here today to testify in support of Chairman McCain's proposition, as expressed in his March 8, 1995 *Congressional Record* statement, that tribal block grants should be a part of any national welfare reform legislation passing by the U.S. Congress.

Mr. Chairman, the Confederated Tribes of Grand Ronde were terminated in 1954 and were restored to Federal recognition in 1983. This very painful experience for the Grand Ronde people, I believe, gives us an unusual perspective on the issue of consolidated flexible federal funding for tribes, including welfare block grants.

Having been deprived of Federal recognition of our sovereignty during termination, the Grand Ronde Tribes today are seeking to give the fullest expression to our powers of governance. We have already entered into a very broad Self-Determination accord with the Bureau of Indian Affairs and a Self-Governance compact with the Indian Health Service. While doing this, we wish to be clear that we are not spurning the Federal government. The Federal government is our partner, and we are bound together by a wide range of law and responsibilities, including treaty and trust obligations.

We believe that direct Federal welfare assistance block grants to tribes will be an effective and necessary important step in our growth as a Tribe and in the strengthening of the special government-to-government relationship between our Tribe and the United States.

Our Tribe has 3,400 members. As a consequence of termination, many of those members have experienced grinding poverty. By 1984, we had one of the highest unemployment rates (39%) in the State and one of the lowest high school completion rates (48%). It was virtually unheard of for a Grand Ronde member to have graduated from college. Today, with restoration, that history has placed a special obligation on our Tribal government. Our members actively look to the Tribal government for guidance and assistance. Among all governments, we have the closest relationship with the people who constitute our membership. I believe we best understand their needs and are best positioned to shape and administer the assistance they must sometimes seek.

But make no mistake. For us, assistance does not mean long term reliance or dependency. Our Tribal government's immediate familiarity with our members, our small numbers, and our Tribes' history have given us a vital stake in fostering a stable and capable community. We cannot afford to waste our membership. We must succeed, and so we have adopted a realistic and determined approach to the provision of assistance services. Moving in this direction has not been easy. Our programs are often contrasted with programs that emphasize leniency and maintain dependency models inherited from the BIA. Our emphasis on personal responsibility has been called uncaring. However, a recent independent survey shows that more than 60% of our members believe individuals should be willing to give something back to the community for the services they receive, while only 23% disagreed and 12% expressed no opinion. It is our belief that we can move forward in new and innovative ways with the creation of Federal block grants directly to Tribes.

Let me briefly tell you how we are going about this with our Self-Determination Accord with the BIA and our IHS Self-Governance Compact. In those undertakings, we have been able to redesign our programs and services from previous Federal dependency models to models which foster independence and focus on individual accomplishment. Our members are required to enter into a contract with the Tribe for specific services. The member must work towards accomplishing their predetermined goals or the services are cut off. As in any contract, a term is fixed, the relationship is defined and the expected outcomes are the result of a negotiated agreement. We use this model for education and social services, and are building a simi-

lar model for our health services planning. We believe it could easily be extended to embrace the provision of welfare assistance.

So, because we have the most at stake, we have the greatest determination to work with our members in overcoming their difficulties. I also believe we have the capacity to manage any funds and programs that may be passed to us in welfare reform block grants. Our Tribe has only been restored for 11 years, yet we manage all our own funds (obtaining an average annual return on investment of 12%) and have taken strong initiative and assumed broad responsibility in operating tribal programs. A good example is the Tribe's child welfare program.

A staff of two caseworkers, with professional supervision, works to reunify families, focus on causes of family breakup such as alcohol, intervenes in cases of abuse and neglect, and initiates cases in our Tribal Court. Our four year old Family Action Program is so respected by the Oregon State Children's Services Division that the State never objects to our efforts to bring cases into Tribal Juvenile Court. The Tribe now initiates all of the dependency cases involving member children in the counties overlapping the reservation. Where the State has been unable to reunite families, our program, working in Tribal Court, has brought families together.

We set up this program when Title II Indian Child Welfare Act funds were granted on a competitive basis, when BIA would dole out the funds every other year to different Tribes. Planning—let alone operation—of the program was impossible based on reliance on a Federal agency. So we used 638 contracts to keep the Family Action Program operable.

While we are proud of the success of this program, it is very limited, and our children remain undeserved. This is especially true in the Portland vicinity, where we lack the funds to bring meaningful counseling and casework services to our several hundred members there.

Mr. Chairman, we will have no difficulty putting welfare block grants to use in a more effective and efficient way than either a Federal or a State agency has or could.

We would like to offer a few comments regarding the concept of tribal block grants in national welfare reform legislation. Because we are not sure exactly what form such legislation will take in the Senate, these observations are not pinned to any specific bill. We do understand, however, that the House-passed version of welfare reform not only declined to consider a tribal block grant amendment, but actually moves the other direction, lumping several programs that already go directly to tribes into the funds that the House bill proposes to send to states. We hope that the Senate will reverse that trend.

Mr. Chairman, any bill providing tribal welfare block grants should also provide the tribe with the option of allowing the states to continue the administration of various programs otherwise included in the tribal block grant. There could be many reasons why this would be a beneficial arrangement, including the size of a tribe, the developmental stage of its administrative capacity, or efficiency or managerial flexibility for the tribe, the state, or both.

Authority for tribal block grants should also enable flexible arrangements between tribes and states. This comes to mind in our case because, as a restored tribe, our members are spread over a six county service area in western Oregon. For purposes of our membership, residence within these six counties constitutes living "on or near a reservation". While we can certainly provide welfare services to our membership throughout this area, it would be a vastly more complicated task if we were given responsibility to provide welfare services to all Indian people within those six counties, which include metropolitan Portland and which are also used as the service area for other western Oregon tribes. On the other hand, we can understand where a tribe with a large contiguous reservation containing much of its membership would want to be responsible for all Indian people on or near that reservation. Tribal block grants that include flexible arrangements with states could accommodate these differing circumstances.

Such legislation should allow tribes flexibility in the design of programs and services to meet membership needs. If multiple block grants are established, tribes should have the ability to move funds between block grants. Many times, individual funding allocations are so small that it is hard to design and implement effective programs. The ability to consolidate funds will give tribes the opportunity to prioritize and focus resources on critical need areas in regards to child protection and social services.

In a similar vein, tribes should have the ability to form consortia to administer their welfare programs. This would enable smaller tribes or tribes with overlapping service areas to more efficiently administer their programs.

We also suggest that tribes have the latitude to work with the Secretary of H.H.S. on any application or reporting requirements. Again, the relative small size of many

tribes when compared to any state could make it very burdensome for tribes to have to comply with reporting or application requirements fashioned for states.

Similarly, we ask that any state administrative spending caps not apply to tribes. Our small size does not allow us to obtain state economies of scale, and having to meet percentage limits on administration could easily impair our ability to run a program. It is important that tribes have the ability to recover full indirect costs.

Finally, regarding any distribution of welfare block grants among tribes, we suggest that an adequate base amount be provided for small tribes, and that distribution details should be worked out in full participation with the Secretary of H.H.S. It would also be helpful if funds can be provided the tribes in lump sum amounts, rather than in smaller periodic installments, to help in program design and administration.

Mr. Chairman, I hope these comments will be of some help. We realize that the development of Senate welfare reform legislation may well be an evolutionary process, but in any event, the Confederated Tribes of Grand Ronde would be pleased to work with the Committee however we can to help shape and advance a proposal for tribal block grants in such legislation. There is no question in our mind that tribes are the best instrumentalities for addressing the needs of our members. We only ask that, in keeping with our sovereignty and the unique government-to-government relationship, we be provided the resources and the opportunity.

PREPARED STATEMENT OF JOAN REBAR, CHAIRWOMAN, SAC AND FOX NATION

My name is Joan Rebar, and I am the Chair of the Business Council of the Sac & Fox Nation in Kansas and Nebraska, located in Reserve, Kansas. I am testifying today on behalf of Native American Family Services, and United Tribes, two tribal consortiums with which we are involved that operate social service and employment programs for several of the resident Kansas Tribes. Accompanying me today and testifying separately is Ida Nadeau, United Tribes' Director of employment and training.

I wish to express our appreciation to Senator John McCain, the Chairman of the Committee and to the other members of the Committee for holding these hearing today at this critical juncture in determining how social services, employment and other programs will; operate in Indian country. We are particularly appreciative of Senator Kassebaum and her staff for their interest and for encouraging our participation at this hearing.

Before discussing some of the practical and technical reasons why federal program dollars should go directly to Tribes and Tribal organizations, it is important, I think, to emphasize that the underlying principal is that Tribes have a government-to-government relationship with the United States. This relationship is separate from the States and was in part designed to protect the Tribes from the States. This relationship flows from our treaties, the solemn promises and the obligations of the United States, as well as, and the vast land transfers from the Tribes to the United States.

The founders of the United States adopted this relationship deliberately, the Constitution reflects, as does two centuries of congressional enactments and court decisions. This relationship, which has been supported by all Presidents in modern times, Democrat and Republican, was recrystalized when Richard Nixon rejected "termination" as federal Indian policy and embraced in its place the policy of "Indian Self-Determination". A principal characteristic of the failed and rejected policy of termination was the effort to turn federal and tribal responsibilities over to State governments. Although there are institutional, political and economic reasons, the record is clear that States have consistently failed to provide effective and adequate services to Tribes and Indian people.

The current debate on block grants and program consolidation needs to recognize the unique federal—Indian relationship and the history of past failures when responsibility was shifted to States. In the Federal-State context, a key rationale for block grants is the premise that dollars go further and are better spent on the local not the federal level. In large part, Tribes line up on the side of local government. For us, however, local means Tribal, not State government.

Tribes have been strong critics of the Federal Governments ability to deliver adequate and appropriate services to Indian people. Those criticisms should not serve as excuses to replace the federal role with a state role. Through years of effort, we are just now beginning to see the federal bureaucracies become supportive of the Tribes through major reforms designed to transfer resources and decision-making to the tribal level [Self-Governance and revamped Self-Determination contracting]; "welfare reform" that ignores these developments risks losing the years of effort and progress that were in large part products of this Committee.

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Along with other Tribes and Tribal organizations, we support the following principles with respect to "Welfare Reform" block grants:

- A three percent set-aside to Tribes from each program.
- Development of formula distribution by the Tribes and the Secretary of the Interior.
- Direct funding for job training to Tribes and Tribal Organizations.
- Recognition of Tribal court child support orders.

Applying these principles in our area of the country, I think, would achieve positive results. All four resident Tribes in Kansas—The Iowa Tribe, the Kickapoo Tribe, the Prairie Band of Potawatomie Indians, and the Sac and Fox—are all located in rural, predominantly agricultural, parts of Kansas. Two Tribes, the Iowa and the Sac and Fox also have trust lands in southeast Nebraska. Unemployment on several of the reservations exceeds 50 percent. Resources and/or conditions for economic development are scare. A determined effort by the Tribes has produced small scale bingo enterprises, gas stations, and several agriculture related businesses. But jobs are still few.

As you are aware, even though we have negotiated a variety of Compacts for Class III gaming with former Governor Finey, the Kansas legislature rejected those Compacts. Governor Graves has just agreed to another version of a Compact and we are waiting to see what the legislature will do this time. Unfortunately, our several years of meetings and hearings with Kansas State legislators and their private and public statements do not give us much assurance or comfort with the prospect of coming to the State for funding.

My Tribe, the Sac and Fox Nation of Missouri, located in Northeastern Kansas and Southeastern Nebraska is a federally recognized Tribe that has a series of Treaties with the United States. We are a small Tribe with a population of 353 members. Our Reservation is a area of 25 square miles, as well as some other scattered trust parcels [some 410 acres] in rural Kansas and Nebraska. Our Reservation's eastern border is adjacent to the Missouri River, with the State of Missouri on the other side. Our location, within two States, and adjacent to a third State presents a unique service delivery situation, but one shared by other Tribes; service provision could involve multiple counties as well as different States.

Twenty-five years ago, the resident Kansas Tribes realized that because of their small size administering programs effectively would be difficult and that in order to receive adequate funding for social services, and to provide services that reflect our unique cultural mores was to form consortiums. Organizing multi-tribal consortiums was and remains, in our view, a viable way to provide services to Indian people. Although we are small, certainly in comparison to the growth in state and county social service bureaucracies, we can demonstrate successes in meeting the goals set by our Tribes—primarily in enabling Indian individuals and families to become contributing members of their communities.

One of the multi-tribal organizations, Native American Family Services, is consortium of three Tribes, two of whom extend into Nebraska. Native American Family Services assists Tribes in strengthening their communities by providing professional social workers. Services include adult social services, foster care, family preservation, child protective services, and domestic violence and prevention. Native American Family Services also provides a crucial role in assisting and guiding state agencies and court systems with respect to the requirements and procedures of the Indian Child Welfare Act. A current frustration is that since funding comes in part through states, the situation in each of the multiple states that is involved is that each requires separate licensing for staff professionals [social workers] and for foster homes. In our service area, houses less than 100 feet apart can have radically different requirements for foster care licensing. The provision of direct funding would allow Tribes under their self-governing powers set standards; state boundaries would not be such a deciding factor. All foster homes could be funded under Title IV E with tribal standards.

Our agency provides an essential service to the State of Kansas Department of Social and Rehabilitation Services. Because the overburdened State Social Workers already carry a case load many times over that recommended within the profession, they are often at a loss when dealing with an Indian child. Simply identifying the child as an Indian becomes an added time burden for the State worker. Complying with the Indian Child Welfare Act's notice and preference placement directives is often unfamiliar territory and difficult for these States. These workers are often unfamiliar with Tribal courts and procedures. In addition, cultural values and heritage issues are often an intricate part of evaluating Indian children and their needs in

a placement determination. Native American Family Services is better equipped, as are Tribal programs generally, to provide these critical culturally sensitive services.

The second consortium of Tribes is United Tribes, which represents the Iowa Tribe and the Sac and Fox Nation whose Reservations are adjacent to each other in Northeastern Kansas and Southeastern Nebraska. United Tribes was founded to provide programs to economically disadvantaged Indians within the service area. United Tribes also focuses on the total Indian community with programs and community involvement. Its objectives are to promote and assist the development of cultural, social and economic opportunities related to Indian Tribes. The operation of successful programs is something we take pride in, particularly where we replace dependence on subsidized programs with self-sufficiency.

United Tribes operates the USDA Food Distribution Program which provides services, including nutritional services, to all qualified Indians living on Reservation or other trust properties within the three county service area. We have recorded a steady decline in participation levels over the past several years which we attribute to a successful effort in educating and upgrading community living standards.

The Woman, Infant, and Children Program, is operated by United Tribes in conjunction with the state of Kansas. In order to be covered by WIC, an individual needs to meet income qualifications, be a nutritional risk and reside in the seven county service area. The goal of WIC is to prevent or correct health problems caused by poor nutrition, by providing education and proper food supplements. Even with the growing movement of Indian people returning to Reservation areas, our Indian case load increase is relatively slight compared to the growth in Non-Indian clients in the service area. We believe that this is a reflection of the tribal ability to effectively deliver services at the community level.

As noted earlier, Ida Nadeau, our JTPA Director has provided a statement concerning the United Tribes employment program, which I have attached to our testimony.

In closing, however, I want to thank the Committee for its efforts. We all realize that the Senate has become the critical battleground with respect to recognition of Tribes as Government service providers for purposes of Block grant and federal Program Reform. Others have related the details of the various studies of the block grants of the eighties and how those experiments failed to service Indian people. We are still are recovering from the disaster of Termination with its focus on State rights to the expense of Indian rights. I urge the Committee and its members to support amendments to Welfare Reform/Block grant legislation, amendments that provide for direct funding at the three percent set-aside level for Tribes, as well as the other principles I and other Tribal witnesses have endorsed. Thank you.

PREPARED STATEMENT OF ELMER MANATOWA, PRINCIPAL CHIEF, SAC AND FOX NATION

Honorable Chairman and Members of the Committee, on behalf of the Sac and Fox Nation, I thank you for the opportunity to address this Committee regarding the provision of direct funding through block grants to Tribes to administer welfare and other social service programs. I ask that our written testimony be submitted for the record.

We are pleased to learn that this Committee has called a hearing to address the concerns of Indian Tribes regarding the 104th Congress' welfare reform agenda. The Senate Committee on Indian Affairs has been the vanguard for Indian Country in protecting our sovereignty and standing up for the legal rights of Tribal governments. Specifically, on March 8, 1995, Chairman McCain, in his statement for the *Congressional Record*, has helped to allay our fears regarding welfare reform; wherein, he reaffirmed our government-to-government relationship between Tribes and the Federal government, and the continued advancement of Federal policies that are intended to enhance the control of Tribal governments over Federal programs.

Chairman McCain and Members of the Committee, the Sac and Fox Nation has been working diligently to keep up with the feverish pace of the U.S. House of Representatives. We have been providing oral and written testimony before the U.S. House of Representatives Committee on Appropriations-Subcommittee on Agriculture and Subcommittee on U.S. Department of Housing & Urban Development regarding our Tribal position on welfare reform initiatives and Tribal Self-Governance. We have included below an excerpt from each of our testimonies that have been submitted to the aforementioned House Committees. We wanted to assure the new Republican Leadership that we are fully aware of the accomplishments of the Republican party and, more importantly, we trust that this Committee will continue

to advance Indian Affairs in a bi-partisan manner and will continue to do so in the 104th Congress.

Excerpt: Testimony from the Sac and Fox Nation

"The Sac and Fox Nation has been attentive to the changes occurring these past months in the 104th Congress. Forty years have passed since the Republicans have been the majority voice of the people's Congress. As Tribal governments trying to survive as a minority voice among U.S. citizens, we have not forgotten what has been accomplished under Republican administrations in the last twenty-one years.

President Nixon signed into law, P.L. 93–638: The Indian Self-Determination Act in January of 1975 which became the first meaningful law in Indian Country in the latter part of this century;

President Reagan developed a meaningful policy on Indian Affairs—recognizing and reaffirming a government-to-government relationship between Indian Tribes and the Federal government in January 1983;

President Bush signed into law, P.L. 100–472: The Indian Self-Determination Act Amendments of 1988—Title II & III in October 1988 which authorized the Self-Governance Demonstration Project with the U.S. Department of the Interior;

President Bush reaffirmed President Reagan's Indian Policy in June of 1991—joined the advocates for Self-Governance and recognized the U.S. Department of the Interior, Office of Self-Governance established for the Self-Governance Demonstration Project; and,

President Bush signed into law, P.L. 102–184: Tribal Self-Governance Demonstration Project Act in December of 1991. This law extended the duration of the Self-Governance Demonstration Project, expanded the Project to additional Tribes and included the U.S. Department of Health & Human Services-Public Health Service–Indian Health Service.

The Republican Administrations have supported laws and policies favorable to Indian Country. We look forward to extending this positive relationship to the Republican majority of the U.S. Congress."

During the forty years of the Democratic Congressional majority, Indian Self-Determination and Self-Governance legislation was introduced and passed by the Congress. Under the Executive Branch, President Clinton signed into law P.L. 103–413: The Indian Self-Determination Act Amendments of 1994 in which Self-Governance received permanent authorization and Self-Determination contracting entered a new era of Tribally determined flexibility and control. Clearly, Indian Affairs have received bi-partisan support regardless of which political party was the majority party or the political party seated in the White House.

This Committee plays a critical role in how the Legislative Branch and the Executive Branch work collectively on Indian Affairs. We look to this Committee once again to ensure the Congress and the President do not forget our presence.

The 104th Congress desires to achieve a balanced budget and is working diligently with State Governors in reforming the burdensome Federal government's bureaucratic processes to provide local control and direction for more efficient utilization of diminishing resources. The Sac and Fox Nation has been and will continue to be supportive and an active participant in the 104th Congress' goal for greater personal responsibility and consolidation of programs and services. We have worked diligently towards attaining this goal for the past four years under Self-Governance with the U.S. Department of the Interior, the Indian Health Service, and, in a special Self-Governance prototype project, with the U.S. Department of Agriculture-Food and Consumer Service–Southwest Regional Office. Self-Governance promotes downsizing and restructuring of the Federal government by redistributing resources to the local Tribal communities and providing Tribal leadership the necessary authority to determine their unique needs. Self-Governance is running on a parallel track with Congress' Block Grant initiative, while maintaining the Federal trust responsibility and recognizing the government-to-government relationship as mutually agreed to in the treaties signed between our respective governments. We urge this Committee to consider Self-Governance as the Tribal alternative to block grants to States.

The Sac and Fox Nation has reviewed various Bills that have been introduced by the U.S. Senate and U.S. House of Representatives: S. 285; H.R. 4; H.R. 999; H.R. 1157; H.R. 1135; and, H.R. 1214. As of the writing of this testimony, H.R. 1214 appears to be a consolidation of the Welfare Reform Bills which are being debated on the House Floor at this time. We submit to you our concerns and recommendations on welfare reform.

Current legislative efforts to introduce Welfare Reform by the House Republicans to address Block Grants, included Tribal governments as a part of the definition of "States", and referred to Indian Tribal governments as "Indian Tribal Organizations", and further referred to Tribes as State agencies. Indian Tribes do not desire

to be defined or referred to as a State or simply an organization. Our sovereignty and our direct relationship with the Federal government fully recognizes our governmental status as Tribal governments. We request this Committee consider rectifying current legislative language to reflect an accurate definition of Indian Tribes, Alaskan Villages and Native Hawaiians, and assure future legislative language recognizes our status as Indian Nations.

The U.S. Department of Health & Human Services and the U.S. Department of Agriculture provide direct funding to Indian Tribes to administer social service programs to the elderly, families and children, e.g., Elderly Feeding Program-Title VI, Energy Assistance Programs, Food Distribution Program on Indian Reservations, Headstart Child Nutrition Program, Supplemental Food Program for Women, Infants and Children, and Summer Feeding Program, etc. Many Tribes operate these programs on a consortium basis because the funding is so limited and costly non-Federal matching requirements cannot be met by individual Tribes. Other Tribes are currently in the process of developing their government infrastructures to become more self-sufficient to administer these programs in the future. The proposed Bills will reduce funding in fiscal year 1996 and subsequent years. Not only will this diminish current limited financial resources, but it will also prohibit other Tribes the opportunity to administer these programs in the future. We ask this Committee to protect current direct Federal Tribal funding levels via specific Indian set-aside funding; and, provide reserve funding for Tribes requesting to administer these programs in the future in order to allow for growth under Self-Determination and Self-Governance.

The Department of Health & Human Services and the Department of Agriculture provide funding to States to administer a variety of programs, wherein, funding and benefits pass-through States to Tribes or the programs are administered directly by the State to individual Indians, e.g., AFDC, Food Stamp Program, School Lunch Program, USDA benefits for the Elderly Feeding Program-Title VI, etc.

This poses a serious dilemma for Congress to be able to determine whether Block Grant redesign by States would continue service to Tribes and individual Indians since the States will receive the funding, or whether a share of these funds should be identified and set-aside for Block Grants to Tribes to administer redesigned welfare and social service programs. For example: The Food & Consumer Service statistics indicate that the Food Stamp Program provides assistance to approximately 133,644 Indian households per month nationwide. The average household size is 3.5, with a national average benefit cost of $169.94 per household each month. This totals $22.3 million dollars expended each month or $268.5 million dollars expended annually for the benefit of Indians.

The Department of Agriculture has been unable to determine how many of these households live on Tribal reservations or in urban locations. None of these funds are received directly or indirectly by any Tribe because current Food Stamp Program regulations prohibit a Tribe from administering the Food Stamp Program unless a State is proven deficient in its administration of the program to Indians.

As a Self-Governance Tribe, the Sac and Fox Nation would prefer to receive an apportioned share of funds currently provided to States to begin self-administration of welfare and social service programs tailored to meet our local needs. However, we also recognize that some Tribes may benefit by a cooperative agreement with States to administer programs on their behalf or share program administration with States. We would prefer that Tribes have the option to select the program administration of their choice.

Numerous other Federal/State assistance programs to Tribes and individual Indians are affected by the proposed Welfare Reform such as Indian Child Welfare, Schools, Tribal Courts, Law Enforcement, Substance Abuse Programs, etc. Of the total amount appropriated by Congress for these programs, a percentage of funds equitable to the funds appropriated to States must be allocated to Tribes to meet the broad range of services we provide to our members and other Indians within our governmental jurisdiction. The appropriate Federal departments and agencies should be required to work in consultation and in partnership with Tribal governments to develop programs that are sensitive to Tribal cultural, economic, and social characteristics.

This Committee is fully aware that Self-Governance provides flexibility to Tribes to determine which Federal responsibilities and programs Tribes desire to undertake and what shall remain a Federal responsibility. Block granting a Department of Agriculture program would be difficult without the Department retaining the responsibility for bulk purchase of USDA commodity foods for the Tribes. Tribal governments must be given the opportunity to leave food budget appropriations with the Federal government for the various food assistance programs in order to maintain adequate benefit levels, while the Tribe obtains control over program adminis-

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tration. This is consistent with Self-Governance Compacts and Self-Determination Contracts in which Tribal governments obtain property and Federal government travel rates through the General Services Administration. Without this advantage to procure consumable food items, property, and travel rates at the same price as the Federal government, Tribes will spend more for less while Welfare Reform is intended to do more with less.

In conclusion, the Sac and Fox Nation desires full participation in the Welfare Reform process, seeks the flexibility and Tribal control afforded under Self-Governance, and urges the Committee to retain all Federal dollars currently appropriated to Tribes and States on behalf of individual Indians. Furthermore, all Federal appropriations for Indians must be made available to set-aside funding for Tribal governments to decide whether programs shall be Federally, State or Tribally administered. We are appreciative of the opportunity to share our concerns with this Committee and we seek your serious consideration of our needs.

Thank you.

PREPARED STATEMENT OF MARTIN ANTONE, SR., PRESIDENT, INTER TRIBAL COUNCIL OF ARIZONA

The Inter Tribal Council of Arizona (ITCA), an organization of 19 tribal governments, appreciates this opportunity to submit written testimony for the record of the Senate Committee on Indian Affairs hearing March 5, 1995, on providing direct funding through block grants to tribes to administer welfare and other social programs.

The ITCA is opposed to welfare reform proposals to block grant federal programs to the states as contained in H.R. 4. Tribal concerns regarding current welfare reform proposals include that the employment opportunities embodied in the welfare reform measures are non-existent in many rural Arizona communities, including the vast Indian reservations where transportation systems and private sector business are lacking. The time limited benefits, child cap and other provisions pose hardships for the already impoverished on-reservation population. Title IV–D child support enforcement activities are extremely limited in reservation communities, as are child care facilities and job service programs.

The statewide implementation of the proposed welfare reform measures would result in unconscionable harm to the Indian population in Arizona and the surrounding communities. In fiscal year 94, the average monthly caseload of on-reservation AFDC recipients was 43,405 individuals comprising 15 percent of the total Arizona caseload and representing an annual benefit amount of $35,281,959. The poverty level on Indian reservations in Arizona is 57% Food Stamp program participation averaged 62,282 individuals in fiscal year 94, or approximately 13% of the food stamp population, and resulted in an annual benefit expenditure of $46,838,551 for the on-reservation population.

Although some tribes and states are attempting to improve the overall economic conditions within their jurisdictions through the establishment of economic activities such as gaming, the longstanding need for resource development across competing needs such as law enforcement, roads, facilities and infrastructure community development continues. Gaming revenues provide some tribes and states with never before available resources to develop governmental infrastructures and will not eliminate the need for federal support in this area as well as in areas such as human services, health, housing, nutrition, jobs development and education. It is a unique historical and legal Congressional responsibility based on treaties and law to meet the federal obligation to tribal governments.

An analogy is that states with their multimillion dollar lottery, horse racing and other gaming activities still have human service needs for federal support and are not "means-tested" based on how much revenue their gaming enterprises generate.

While the ITCA is opposed to block granting human service programs to the states, any welfare reform or block grant measures that are enacted should provide a direct set-aside for tribes to allow tribal governments to administer the programs and to serve all tribal members, regardless of state boundaries. Funding allocation formulas should include a base amount for small tribes to administer programs. Tribal allocations should be deducted from the full federal appropriation before the funds are allocated to the states or territories.

Historically tribes have not had success in gaining access to much needed services when funding has been block granted to the states For example, the Arizona tribes do not receive services funded through substance abuse or maternal and child health block grants. Through extensive efforts with federal and state agencies, tribal governments in Arizona were able to access funds from the Title XX Social Services

Block Grant (SSBG) through intergovernmental agreements with the state. Yet tribes in other states do not have access to this pass through SSBG funding arrangement Arizona has not entered into intergovernmental agreements with tribes for the administration of many services and access to state administered services has been problematic due to issues such as different sets of law and regulations, transportation, service location, rural isolation and language barriers. There are also potential difficulties with the state monitoring the services, the imposition of state standards and different court systems.

In your April 5, 1995, letter to Karen Funk you formulated some specific questions for tribal organizations regarding welfare reform initiatives. The following is the response of ITCA to those questions:

How can Congress provide for flexible tribal administrative authority and still hold a Tribe accountable for basic financial management and program implementation?

Many tribal governments have a long history of administering federal programs including financial assistance, nutrition, child welfare, child care and health services. These are funded through not only Indian Self Determination Act contracting but other programs authorized by other federal legislation. With regard to basic financial management tribes are required to have annual independent audits under OMB Circular A–128. The audits are adequate to ensure basic standards of financial management.

Flexible tribal administrative authority should be addressed through provisions for waivers of requirements that are unmanageable or inconsistent with small rural programs, for example, elaborate data management systems. Tribes should be allowed, to the maximum extent feasible, to design programs based on local needs and conditions while meeting the overall goals of the programs, such as is currently allowed to states under Title XX of the Social Security Act. Tribes should have options to implement programs on an incremental basis and to choose which programs they administer directly with technical assistance from the Department of Health and Human Services.

How can Congress encourage Tribal and State courts to work cooperatively to set and enforce child support orders that off-set State and Tribal cash assistance programs?

The legal framework for the enforcement of child support orders across jurisdictional boundaries was established by the "Full Faith and Credit for Child Support Orders Act," P.L. 103–383. Cooperation in the enforcement of child support orders between state and tribal courts requires mutual respect for the other's judicial processes and adequate tribal laws and enforcement personnel After decades of distrust and isolation of tribal judicial systems cooperation on this issue will take education.

All tribes in Arizona have tribal courts. Several tribes and several counties in the state of Arizona have enforced each other's orders for child support as a matter of comity between courts. This comity is a result of knowing each other at a personal as well as professional level

The Supreme Court of the State of Arizona established the Arizona State and Tribal Court Forum which provides a forum for dialogue between judges. The Arizona State University Indian Legal Program sponsors an annual tribal, state and federal judges conference. These activities are slowly starting to build mutual respect Support of these or similar programs will help foster better relationships across jurisdictional boundaries

A more immediate need is for tribes to hire needed personnel and to adopt the tribal laws to permit their courts to enforce child support orders from other tribal jurisdictions or from states. Funding has never been available to tribes to develop comprehensive child support enforcement activities. The trained personnel are not available to pursue enforcement. Funds must be made available to tribes to hire court advocates to pursue collection of child support for reimbursement to the welfare programs.

Funds are also needed for tribes to evaluate and, where appropriate, update tribal codes to be in compliance with P.L. 103–383 with the recognition that like states, the tribes will tailor the laws to meet their own needs. Without this, the tribal courts may not have the authority to act.

Again, tribes should have the option to receive direct funding to enforce child support orders Technical assistance in this arena should be made available by the Department of Health and Human Services through discretionary or some other flexible funding mechanism.

How can Congress establish clearly defined service populations, so that a State, a Tribe, and the individuals in need of assistance can easily understand which individuals the State is to serve and which the Tribe is to serve, preventing duplicative service and gaps in service?

The tribes already have defined service areas including on or near reservation geographic areas. Some tribes have expanded their service populations to include non-tribal members, non-Indians and expanded service areas Regarding duplication of services, many tribes have working relationships and referral agreements with states For example in the WIC program, states and tribes have dual participation agreements and procedures Eligible on-reservation persons should also be able to participate in state programs which are not available on reservations. This is particularly true since their numbers are included in the formula for allocations to the states.

Would it be advisable for Congress to provide a Tribe with funds to serve non-member Indians on its Reservation?

Tribes should have the option to provide services to both non-member Indians and non-Indians who reside on reservations. For example, precluding non-member Indians from participation in the JOBS program has been problematic. There are also programs such as WIC and commodity foods which are administered by tribes and serve non-Indians in the service area. An example is the Colorado River Indian Tribes in Arizona which administers the WIC and Commodity Food Program for the entire La Paz County in Arizona. These types of questions should be addressed on a case by case basis depending on what makes sense, works well and is cost efficient at the local community level.

Would it be advisable for Congress to provide a Tribe with funds to serve member Indians who reside off-but-near the Reservation? How about non-Member Indians off-but-near the Reservation?

Yes; to both questions. Tribes should have the option of providing services to all of the eligible recipients within their service area.

Would it be advisable for Congress to provide a Tribe with funds to serve non-Indian members of an Indian's immediate family, such as a non-Indian parent whose child is Indian?

Yes.

Are there some programs or activities included in the House bill that simply do not make sense under any circumstance for a Tribe to have a role in administering, even on a pass-through basis? If so, please identify them and explain why they do not make sense.

No; this is not to say that we agree with the punitive reforms embodied in H.R. 4. However, the legal status of tribes as federally recognized governments eligible for direct funding should be articulated in all of the programs, with the tribes having the option to choose those they plan to administer. With regard to state pass through of funds, states have not, in many cases, developed the capacity to enter into intergovernmental agreements with tribes to administer services and as a result access to services has been problematic.

Would it be advisable for Congress to restrict tribal eligibility for some or all block grant funds to those meeting certain minimum service population sizes? If so, which funds and what size? If not, would it be advisable to restrict the eligibility of smaller Tribes only through multi-tribal consortia with a minimum service population size? If not, what mechanism can Congress use to make tribal assumptions or pass-through control of federal welfare and social service funds cost-effective?

No; tribal government eligibility for direct funding for services should not be based on arbitrary criteria such as size of service population. It has been the experience of ITCA that even small tribes have been able to develop and administer services, including cash assistance, nutrition, child welfare, and employment related services, often from multiple funding sources. For these to be cost effective there needs to be a base amount of funding in order that even the smaller tribes can administer the programs Providing an adequate amount of base funding is more cost effective than sending services from Phoenix or Flagstaff to the Havasupai reservation.

There should be a direct set-aside of funding for tribal governments in any welfare reforms enacted by Congress. Tribal governments are in the best position to locally plan appropriate services in their communities. The following principles and recommendations reflect the position of the Inter Tribal Council of Arizona:

1. The legal status of tribes as independent, federally recognized governments in the federal system of governments should be articulated in all federal legislation and policy.
2. All legislation and policy governing federal human services programs should provide tribal governments the option for direct federal program funding. There must be a set-aside of adequate resources for tribes to operate programs.

3. Federal allocation formulas for the distribution of human services funds should include a base amount for small tribes in order that small tribes may apply for and administer programs. Tribal allocations should be deducted from the full federal appropriation before the funds are allocated to the states and territories.
4. All tribal governments should be assured eligibility for direct funds. Current laws and regulations which restrict eligibility for direct funding should be amended and revised.
5. DHHS and the Department of Interior should coordinate efforts at the national level to establish policies which allow tribal governments to serve all tribal members, regardless of state boundaries.

Thank you for your continued efforts in advocacy for tribal governments.

PREPARED STATEMENT OF WILBUR BETWEEN LODGES, PRESIDENT, OGLALA SIOUX TRIBE, PINE RIDGE INDIAN RESERVATION, PINE RIDGE, SD

Recent action taken by the U.S. Congress, House of Representatives compels me to establish the basic for the government-to-government relationships between the Oglala Sioux Tribe and the United States of America as set forth in the 1868 Treaty between the United States of America and different Tribes of Sioux Indians, concluded April 29, et seq. 1868; Ratification advised February 16, 1869.

There are several concepts involving treaties that are internationally recognized, First, a treaty is a contract and agreement made between two or more sovereign nations that is as binding today on all parties; that originally signed such treaties, as the treaty was the date it was signed over 100 years ago, The U.S. Constitution, Article 6, section 2, states that "Treaties are the supreme law of the land."

Indian Treaties have the same force and effect at any other treaty entered into by the United States of America and any foreign nation, The United States Supreme Court and other federal courts have consistently upheld the validity of Indian Treaties and the continued sovereign status of Indian Nations.

Treaties are the "Supreme law of the Land" and are superior to any State law. Violation of a treaty by one of the parties does not nullify the treaty! Although the Congress of the United States adopted a statute in 1871 ending treaty making with Indian Tribes the statute provided that "no obligation on any treaty lawfully made and ratified with any such Indian Tribe prior to March 3, 1871 shall be thereby invalidated and impaired."

As stated by President George Bush in his inaugural address, January 20, 1989, "Great Nations like great men must keep their word. When America says something, America means it whether it is a treat or agreement or vow made on marble step."

The fact that the United States has not kept word and have broken our treaty, reflects on the integrity of the United states of America not on the integrity of the 1868 Treaty.

Tribal Sovereignty predates the establishment of the United States Government. Except for specific limitations set forth in treaties, the U.S. Constitution and federal legislations the Oglala Sioux Tribe possesses the entire spectrum of inherent governmental authority to the same extent as any Sovereign Nation.

From the very beginning of contact between non-Indians and sovereign Indian nations, treaties between the parties recognized the concept of tribal sovereignty. History reveals that the United states government soon recognized that the rights of Indian tribes as distinct nations possessing inherent sovereignty was constitutionally necessary in order for the United States to make a legal distinction between Indian tribes and other cultural and economically disadvantaged groups. This relationships is not based upon race, but is a political relationship. The entire spectrum of laws, statutes, regulation, federal and U.S. Supreme Court decisions addressing this tribal/federal relationship is based upon this political relationship. However it is also the political relationship that subjects tribes to constant attack by the executive, judicial, and legislative branches of the United States Government. This sovereign governmental status has been affirmed in treaties between the United States and Indian Tribes, federal and Supreme Court decisions and in federal statutes and regulations.

Based upon treaty language and the Constitution and laws of the United States the Supreme Court stated in Worcestor V., the Georgia law had no force within the Cherokee reservation boundaries without the assent of the tribe or in conformity with the treaty and the acts of the U.S. Congress. Further that "the whole intercourse between the United States and the Indian nation, is by the Constitution and laws vested in the government of the sovereign United States Government.

This concept holds true today and any person or group must consider the views of the sovereign Indian Nations before proposing to block grant funding of any program not directly to the Indian Tribes that will affect the people they serve.

President Nixon's Indian policy statement delivered to Congress on April 8, 1970 stated that "increased tribal control did not mean absolving of federal responsibility" This proposal for increased tribal control was subsequently enacted as the Indian Self-Determination and Education Assistance Act.

Also, President Reagan, in his Indian Policy Statement of January 24, 1983 declared "Our policy is to reaffirm: dealing with Indian tribes on a government-to-government basis and to pursue the policy of self government for Indian tribes without threatening termination." "In support of our policy, we shall continue to fulfill the federal responsibility for the physical and financial resources we hold in trust for the tribes and their members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards,"

President Bush's Indian Policy Statement of June 17, 1991 declared that "the Reagan Policy would be the cornerstone of the Bush/Quayle policy regarding Indian tribes. This government-to-government relationship is the result of sovereign and independent tribal government being incorporated into the fabric of our nation...I take pride in acknowledging and reaffirming the existence and durability of our unique government-to-government relationships."

President Clinton has continued his predecessors commitment to tribal self-government and self-determination. On April 29, 1994 he issued a memorandum for heads of all executive departments and agencies instructing them to ensure that their respective department or agency "is operating in a government-to-government manner with tribal governments."

Funding of Indian programs must be direct funding for Tribal Governments through Tribal block grants consistent with the federal trust obligations to Indian Tribes. This direct funding procedure need not include state governments. Direct funding procedures are consistent with the existing government-to-government relationships between the Indian Tribes and the U.S. Government.

With the recent adoption of the (self) determination Amendments and making permanent the Self Governance Demonstration Project Congress expressed an intent to provide direct Federal funding to tribes and affirmed the right of tribes to choose to administer and design their own programs.

Senator John McCain recently stated "Block grants (state) intend to diminish the trust responsibility that Congress has and to undermine tribal sovereignty and, the government-to-government relationships between the U.S. and the Indian Tribes.

The Oglala Sioux Tribe is proposing a 3-percent share of the appropriations be granted to Indian Tribes in order to allow Indian Tribes to operate their own block grant programs on the same basis as states.

Shannon County, South Dakota, home of the Oglala Sioux Tribe has been identified by the 1980 and 1990 census as the poorest county in the nation. The Oglala Sioux Tribe experiences an unemployment rate in excess of 80 percent. The Oglala Sioux Tribe is in the best position to develop and administer social welfare and health services on the Pine Ridge Indian Reservation under these condition! The Tribal government has the unique knowledge and qualifications necessary to provide effective services to the population of the Pine Ridge Indian Reservation. The Tribe can also provide these services in a more cost effective and efficient manner. Direct Funding would enhance Oglala Sioux Tribal control over federal funding.

The Oglala Sioux Tribe has also joined in the statement prepared by Hobbs, Straus, Dean, and Walker concerning block grants. We must reiterate that the Oglala Sioux Tribe fully supports direct funding procedures between the federal government and the Oglala Sioux Tribe with a reduction in federal regulations which in turn reduces administrative program costs. It has been showed that Tribally operated Social Service programs generally outperform state operated programs in tribal communities (Indian Child Welfare: A status report).

The Republican members of the U.S. House of Representatives take great pride in their "Contract with America" and the fact that they have kept their "Contract with America" with one exception. Over 127 years ago the United States Congress entered into a Contract with different Tribes of Sioux Indians. This contract is the 1868 Treaty which included the Oglala Sioux Tribe, we sincerely request that the U.S. Government keep their contract with different treaties of Sioux Indians.

Please feel free to contact me at (605) 867–5821 to further discuss the position of the Oglala Sioux Tribe.

PREPARED STATEMENT OF NORMAN DESCHAMPE, PRESIDENT, MINNESOTA CHIPPEWA TRIBE

The Minnesota Chippewa Tribe, comprised of six member reservations in Minnesota which include Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs and White Earth Reservations and on behalf of the Indian people and their children who are members of our federally recognized tribe.

As the duly elected President of the Minnesota Chippewa Tribe, it falls within my jurisdiction to safeguard the welfare of tribal members and their children. I am concerned that H.R. 1214 has conspicuously ignored Indian issues that are of major concern to us. If passed, this legislation will negate and destroy the progress made by tribes and individuals in their efforts to achieve a viable and independent lifestyle.

I have asked myself many questions in regard to this proposed welfare reform bill. I thank you for the opportunity to pose these questions to you and to offer some of the recommendations I have obtained from people who work daily in the fields of social services, education, employment and training.

H.R. 1214 provides for block grants that will go directly to the states and it allows the states to create their own welfare reform programs. Tribes have been successfully providing welfare reform programs of their own design for the past five years. They have achieved far greater participation and placement rates within their own population than the states ever have. However, this bill does not recognize this achievement or the ability of Tribes to design and implement effective self-sufficiency programs. It will give the funds previously allocated to Tribes back to the states. Once again, Indians will not be served

AFDC will no longer be an entitlement. One definition of welfare is an "official effort to improve the living conditions of the needy". I believe that we as leaders and officials have an obligation to make that official effort. Discontinuing the entitlement status opens the door to make assistance available on a "first come, first served basis". Public agencies that serve the poor do run out of funds. It is not unusual for energy assistance funds to run out, leaving people who are eligible without assistance Child care funds run out, emergency funds run out, isn't this also a possibility with welfare funds? I believe it is.

Limited funds for work and training programs. How easy will it be for states to ignore the needs of Indian people who live in remote, rural areas with high unemployment rates when they can place people in the metropolitan areas much quicker and easier? Who will get assistance for training (if there are funds available)? The person who lives five miles from a vocational school or a person who has to drive sixty five miles one way? Which is the case with our Indian reservations.

Lack of marketable job skills is a valid barrier to self-sufficiency. In the February 16, 1995 release from the House Committee on Ways and Means this issue was not addressed. Will people have an opportunity to learn a skill that will enable them to find work? Or are we going to tell them that they have learned skills as a homemaker that will transfer into the job market? Can a mother of three who has managed a budget and learned how to make ends meet on $532.00 a month qualify as an entry level accountant?

And if, against all odds, she does become employed, will the job provide medical benefits? Entry level and minimum wage jobs do not generally provide hospitalization benefits. H.R. 1214 does not allow for or provide transitional medical benefits. At the high cost of insurance, can small business afford to pay this cost, can the newly employed afford hospitalization insurance and other work related expenses on an entry level salary? Or will we hope for the best and assume the family will not have any medical expenses until they are able to obtain health care insurance?

While welfare reform should be addressed, I believe that H.R. 1214 has taken an unrealistic and uniformed approach to curing the woes of the welfare system. I have heard testimony given by members of Congress that would lead people to believe that all a person has to do is get a job. I don't believe that they are familiar with the multiple barriers that many people face in relationship to self-sufficiency. Examples of the barriers faced by Indian people include lack of transportation, child care, job skills, education and employment opportunities. Many of our clients also have chemical dependency issues, domestic abuse issues and criminal records. These issues need to be addressed, they will not be addressed under H.R. 1214.

Since it's inception in 1989, Tribes have demonstrated their ability to implement a welfare reform program under JOBS and operate it successfully. In the mid-eighties, the state of Minnesota implemented their own welfare reform program. As their JOBS program is now, it was a voluntary program to assist people in reducing their dependency on AFDC. In nineteen counties in northern Minnesota, there were less than twenty Indian participants. Non-Indian employment and training service

providers were unable to successfully recruit Indian participants. By October 1, 1990, five Tribal JOBS programs began operating and providing welfare to work services. As of January of this year, these programs serve in excess of six hundred participants per quarter.

Approximately 58% of our clients are enrolled in an education or vocational training program that will enable them to become self-sufficient upon completion. Young people under age 24 are completing their high school education. We operate a vocational testing program that is comparable to any in our state to assist clients in choosing careers that will enable them to achieve employment based on their own skills, abilities, interests and existing job market.

Before decisions are made to completely eliminate the JOBS program, consideration should be given to the fact that four years ago, these people were doing nothing to reduce their own welfare dependency. We are just beginning to see people graduate from two and four year educational programs. The clients who have participated in the Tribal JOBS tend to view AFDC as a temporary situation and not as a permanent lifestyle.

It is unseemly that I would criticize efforts being made to reform the current welfare system without also making suggestions that I believe would make welfare reform more equitable for all concerned.

Four percent of Funds should be set aside for Tribes to continue to Administer Welfare Reform Programs at a local level.

Tribes have demonstrated their ability to design, implement and administer effective welfare to work programs with higher participation and placement rates than states have achieved within the Indian AFDC population. As with state governments, tribal governments have a better understanding of what will work in their AFDC community.

Maintain AFDC as an Entitlement Program.

Despite the need to reduce the budget, the Congress should look for other means to accomplish this In the United States, a person should be able to obtain assistance if they are in need. We cannot afford to adopt legislation that would further promote poverty, hunger, homelessness and crime. People with children who have no visible means of support should be entitled to receive assistance for their families. Funds should be made available via budget cuts in other places or by a more stringent and organized effort to collect child support.

Mandatory Participation vs. Voluntary Participation.

After operating a partially voluntary program similar to the state of Minnesota for four years, the Tribe agrees with the state that participation should be mandatory and that failure to participate should result in a loss of benefits for that individual.

While participation rates are higher than those achieved when the state provided services, it is believed that welfare costs could be reduced at a higher and faster rate if participation in welfare reform programs was mandatory.

The Tribes in Minnesota have consistently operated programs comparable to the state programs. The state has already implemented legislation changing the welfare reform program from a voluntary to mandatory program. Tribal programs are in agreement with this legislation.

Establishment of Eligibility Limitations.

Minnesota and the Tribes support time limits for AFDC. Tribal programs would support a limit of two years for those recipients born after 1971. As other limits seem inevitable, for those who have been on AFDC longer, are older, have larger families and who have developed more substantial barriers, it would be more realistic to limit AFDC to five years, if actively participating in an approved welfare to work activity.

Continue to provide Job Skills Training.

AFDC recipients have limited occupational skills and work experience. Given the current unemployment rates and the lack of available jobs in many areas, particularly rural and reservation areas, AFDC recipients are unable to compete in the job market. To truly reduce welfare costs, people must have job skills that will enable them to support their families. Child care and supportive services should also be provided during their participation in work and training related activities.

Provision of Transitional Child Care and Medical Assistance.

Provisions should be made to provide continued child care and medical assistance based on need for two years following job placement. Many AFDC recipients are unable to obtain adequate child care when entering employment and are unable to afford it. If employers do not offer medical insurance, transitional medical assistance should be available. Lack of adequate medical coverage and child care is a deterrent to obtaining and retaining employment.

Child Care.

Child care funds should follow welfare reform funds. Tribes are not adequately served by states in regard to child care funding. In addition to the recommended 4% set aside of tribal funds it is requested that child care funding also be included in the tribal package. It has been documented by tribes and the Department of Health and Human Services that states do not provide equitable child care monies to tribal participants.

Sustain H.R. 5252.

Passed during the second session of the 103rd Congress, this legislation was of vital importance to Indian and tribal programs, it is imperative that this bill continue to be upheld.

Principal Wage Earners in UP Cases Should Participate in Job Search/ Work Programs.

Mandate participation of principal wage earners in UP cases in at least an eight week Job Search Program. Job Search should include at least 60 hours of structured and accountable job search activity including job seeking skills classes. If at the end of ninety days, the UP has not obtained employment, mandate participation in a community work experience program for the duration of their AFDC eligibility.

Conclusion:

I appreciate the opportunity to share my concerns with the members of the 104th Congress. I also appreciate the efforts being made to assist people with their goal of self-sufficiency. Your thoughtful consideration and support of this testimony, comments and recommendations is needed. It is difficult to consider or view all sides, I have presented those of the tribe to the best of my ability in the hope that it will provide you with some insight into what your decisions will mean to Indian people. Thank you for your time and the opportunity to share my views.

PREPARED STATEMENT OF NORM DEWEAVER, WASHINGTON REPRESENTATIVE, INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING COALITION, WASHINGTON, DC

Congress is now writing legislation which would completely restructure the federal program of Aid to Families with Dependent Children (AFDC). Any legislation of this type will have a major impact on the quality of life and on poverty conditions in Indian reservation areas and Alaska Native communities. There are an estimated 150,000 to 175,000 Native people in these areas who now receive AFDC benefits.

Welfare reform can succeed in Indian Country only if it reduces, not reinforces dependency. This means that it must contribute to the creation of new job opportunities in areas with the highest rates of unemployment in the country. It also means that it must assist potential adult wage earners in qualifying for, obtaining and retaining employment through a program equivalent to the tribal component of the Job Opportunities and Basic Skills (JOBS) program.

Welfare-to-work services in reservation and Alaska Native communities must be provided by tribal governments, with federal financial assistance. Tribal governments, not state agencies, are the primary providers of services to Native people in Native communities. Tribal governments have a direct government-to-government relationship with the federal government, established in the United States Constitution.

Indian tribes and Alaska Native organizations have made major strides in reducing welfare dependency through services provided under the Job Opportunities and Basic Skills (JOBS) program authorized by the Family Support Act of 1988.

This program provides direct funding to tribal governments from the U.S. Department of Health and Human Services. The money is not channeled through the states. There is no matching share.

Currently:

- 77 tribal governments, intertribal consortia and Alaska Native organizations are funded to provide JOBS services. Others would like to participate, but participation in the program was frozen, by law, in the spring of 1989.
- 5,000 employable adult Indian and Alaska Native people on AFDC were served by tribal JOBS programs in an average quarter in Fiscal Year 1993, the most recent year for which data are available.
- Over 2,000 job placements resulted from tribal JOBS services in Fiscal 1993. These placements were achieved despite joblessness rates which averages over 50% across Indian Country.

The House of Representatives has passed a welfare reform bill, HR 4. That bill would end all current efforts to reduce welfare dependency in Indian reservation areas and Alaska Native communities.

The bill:

- Abolishes all funding for the JOBS program, including its tribal component.
- Turns the JOBS money now going directly to tribal governments over to state welfare agencies as part of the bill's cash benefits block grant. No money would go to tribes even though tribes have received support from the JOBS program for over five years.
- Provides no assurance that services to reduce welfare dependency will be available in reservation areas. States would have the freedom to choose what services to provide and which communities to provide them in. Most reservation areas would be denied services because of their geographic remoteness, their lack of employment opportunities and the fact that states consider services to Indian people primarily a federal responsibility.
- Ends cash benefits regardless of whether recipients want to go to work, but are in areas where no job opportunities are available to them. Needy families would be denied benefits if they have received assistance for two years and are not working or if they have received assistance for five years in their lifetime.
- Eliminates any assurance of child care services for those in education, training or work programs or as needed to help them retain employment.

The House bill would do nothing to reduce welfare dependency in reservation areas or Alaska Native communities. It would deepen poverty by ending cash benefits for many and by terminating the services necessary to help Native people attain self-sufficiency.

In order for welfare reform to work in Indian Country, it must support programs to reduce dependency by increasing employability.

Specifically:

1. Federal law should continue to authorize special employment and training services for welfare recipients in reservation areas and Alaska Native communities.

2. This program should be directly funded by the federal government to tribal governments and Alaska Native organizations and be controlled by them.

3. Allowable activities under this program should include:

a. The full range of employment and training services.

b. All related child care services.

c. Work experience opportunities which are available while a person is receiving any form of cash benefits, and afterwards for those who cannot find other jobs.

4. The program should provide each tribe with the flexibility to design and deliver services under this program in ways which the tribe considers most effective in its circumstances.

5. The program should provide support for economic development to help create new jobs for employable people now dependent on welfare.

If the welfare reform bill developed in the Senate authorizes continued funding specifically for welfare-to-work services, it should:

- Provide for direct federal funding, without matching share requirements, to enable Indian tribal governments, consortia of such governments and Alaska Native organizations to provide such services within their service areas.
- Authorize not less than 3% of the overall funding for such a welfare-to-work program for the tribal component and extend the coverage for services to adult Native recipients of all forms of means-tested income transfer programs.
- Authorize an equal amount of funding for child care services for the participants in such tribal programs as well as such participants who have found employment but continue to need child care.
- Provide for support for the development of subsidized work opportunities for those who cannot find unsubsidized employment.

If the welfare reform bill does not include such an authorization, then authorization for such services should be contained in any job training program consolidation bill approved by the Congress.

In order to enable Indian tribal governments to provide for the needs of their members, it has been proposed to set aside 3% of the funding in any of the block grants in a welfare reform bill, including the combined cash benefits welfare-to-work block grant in HR 4, for tribal governments.

The Coalition supports such an approach, including provisions which would allow those tribes and Alaska Native organizations that elect to do so the opportunity to administer their own cash benefits program for needy families. A number of tribes have said they are interested in assuming the responsibility for what is now the state-administered AFDC program. In addition, under any new block grant arrangement states will have a much freer hand to decide who gets cash benefits and under what terms. Native AFDC clients in reservation and Alaska Native communities are likely to suffer. Tribes will do a much more sensitive job of administering a cash assistance program in their areas of jurisdiction.

However, even if a welfare reform bill were to authorize direct funding to tribes under a cash benefits block grant, this does not insure that the kinds of services now offered by tribal JOBS programs would continue.

In order to accept such a block grant under the terms in the House bill, tribes would generally have to agree to the same kinds of requirements applicable to states. This includes a number of restrictions on who can receive benefits. An extensive tracking mechanism would be necessary to enforce restrictions on benefits, including a tracking mechanism that shares information between tribes and states.

If tribes were to receive direct funding under the cash benefits block grant in HR 4, they would also have to insure that a specified percentage of their welfare caseload works. After receiving benefits for two years, recipients would have to work or lose their benefits. The bill has no special money to support work sites for the persons on assistance.

If tribes were to receive direct funding under the cash benefits block grant in HR 4, they would also have to agree to provide child support enforcement services.

In addition to all these considerations, the net effect of a welfare reform bill would be not to provide benefits to needy families, but to restrict them. Funding is "capped" with little room to deal with any increase in the number of families needing cash assistance. If tribes were to handle these funds, it would be up to the tribe to say "no" to tribal members in obvious need.

How many tribes could or would agree to accept a cash benefits block grant under all these conditions isn't known. For this reason, it is essential to enable tribes to provide welfare-to-work services without having to assume the responsibility for all aspects of the administration of a cash benefits program.

Welfare reform can work in Indian Country, but it will only work if it includes the services necessary to reduce, not reinforce dependency. Employment and training services are an essential part of this process. Tribal welfare-to-work services must be continued.

PREPARED STATEMENT OF JAMES LAWRENCE JOSEPH, CHAIRMAN, SAUK-SUIATTLE INDIAN TRIBE

My name is James Lawrence Joseph and I am the Chairperson of the Sauk-Suiattle Tribe. We are located in a rural community in Northwest Washington State. I offer my testimony on the effects of federal welfare reform in Indian country so that the Senate Indian Affairs Committee can obtain a realistic view of how we as a sovereign people will be impacted, and to emphasize that full participation of tribal governments in the welfare reform process is needed to address tribal concerns.

The Sauk-Suiattle Tribe is democratically controlled by an elected Tribal Council. Though our ancestors were signatories to the 1855 Treaty of Point Elliott we did not become Federally Recognized until 1975. In 1982 a reservation of 23 acres was established near our ancestral area of the Sauk prairie.

Though we are categorized as a "small and needy" tribe by the Bureau of Indian Affair's guidelines, we continue to meet our 250 tribal members' most basic needs. Presently we provide social, educational and related medical services to our tribal members (and other Native Americans in our service unit), including housing for 19 families.

Our Tribal Court is administered by the Tribe in conjunction with contract services provided by Northwest Inter-Tribal Court Systems. Our court predominantly presides over criminal matters, Indian Child Welfare, housing, Youth and Family codes, civil ordinances, etc.

The Tribe is the major employer of our people. Fishing, woodcutting and foraging remain seasonal employment activities for some members of our tribe. Unfortunately, the commercial fishing season has been severely limited for the last two years; therefore, tribal members have been unable to rely on this activity as a stable means of support.

The Tribe administers several programs that receive all or most of their funding from the federal government. A small portion of the federal funds are passed to us through the state. Those federal funding programs are now at risk of being eliminated, severely cut back, or transferred to the state. Below is a general overview of how such changes will affect our tribal programs and people.

Education

Education is the top priority of our tribe. It serves as a foundation for future economic and social self-sufficiency. Our Education Department consists of seven programs. They are as follows: Higher Education, Adult Vocational Education Training (AVET), Adult Basic Education (ABE), Johnson O'Malley (JOM), Library, Jobs Op-

portunity and Basic Skills (JOBS), and the Job Training Partnership Act (JTPA) administered by the Western Washington Indian Employment and Training Program.

Each of these programs are funded in whole or in part under such federal programs as: Job Training Partnership Act (JTPA), JOBS program, Library Services and Construction Act, Vocational Rehabilitation Act, and the Vocational Educational Act.

Department of Children and Family Services

This department serves the community in four areas: Indian Child Welfare, Day Care, Early Childhood Education and Assistance Program (ECEAP), and the Tribal Mental Health Training Program.

Each of these programs are funded in whole or in part under such federal programs as Child Care and Development Block Grant; Family Preservation and Support Services; Child Welfare Services and numerous state programs which receive matching funds from the federal government.

Tribal Food and Nutrition Service

The Tribe administers two food programs, directed mainly at serving elders and children, that prepare and deliver food to the tribal community. These daily meals are often the only nutritional and well-balanced meal they receive as part of their overall diet. The two programs are the Elders Food Program and the Child Nutrition Program. The funding for these programs are shared between various federal and state programs for nutrition and health, such as the School Lunch Program and the Summer Youth Feeding Program and Child Nutrition.

Social and Health Services Department

Except for a small Emergency Food Voucher grant from the State Department of Community Development, this department is entirely funded by Department of Health and Human Services Indian Heath Services. This program includes Equity Health, Mental Health, Alcohol Substance Abuse and Prevention, and Cooperative Rehabilitation services including aftercare counseling. We also assist with coordination of the USDA Commodity Foods and the Low Income Home Energy Assistance Program administered by the Small Tribes Organization of Western Washington.

Other Federal Funding

The Tribe also receives limited funding from the following federal programs: Low Income Home Energy Assistance program, and various Housing and Urban Development (HUD) Community Development Block Grants.

We believe the House welfare reform proposal is in direct conflict with the principles of self-determination and the right of tribes to control and operate federal programs. Tribes, like the states, should be allowed to participate and dictate what is needed for the development of their communities. Tribal participation in the welfare reform process ensures the trust relationship and the long-standing principle of a government to government relationship with the federal government.

As the above overview suggests, under current proposals, we will either lose critical funding altogether or suffer substantial decreases in already limited and scarce funds crucial to the welfare of our community. Or, we will be forced to compete with state agencies/communities for funding allocations in political forums that have traditionally been hostile to tribal sovereignty.

In addition, we are deeply concerned about how the present scheme to shift from federal/state partnerships to the state block-grant approach will affect particular programs such as Family Support (AFDC, child support enforcement program, at risk child care grants), Supplemental Security Income (SSI), and housing assistance. Many of our members receive these public entitlements. Imposition of mandatory work programs, coupled with the loss of the federally administered JOBS program will severely impact our members who have very limited employment and economic opportunities in our community.

Like most Native communities, we are dealing with serious health care issues and an alarmingly high incidence of poverty and unemployment. Understandably we are concerned about our lack of necessary program reserves and funding to meet basic needs of tribal members if they are unable to go from welfare to work as presently planned.

Therefore, in order to meet the needs of our people in the present mood of welfare reform, we strongly urge the Senate to support the following provisions:

1. Direct federal funding to tribal governments to address the elimination of the longstanding requirement for states to match federal monies for assistance to poor people;

2. Tribal participation in the welfare reform process to ensure government to government negotiations to determine tribal needs and to protect tribal sovereignty;

3. Flexibility in the design of tribal programs between federal and state governments. This would include direct communication and consultation with tribal governments, consortia, and inter-tribal committees or commissions, even if a tribe declined to assume full administrative control over a particular program. Tribal-state consultation in programs declined by the tribes is a key component to successful welfare reform;

5. All job training, education, and job creation programs should be available to or apply to Indian tribes.

Certainly, I speak only for the Sauk-Suiattle Tribe and my comments are directed at only a fraction of the havoc I believe will occur if the present welfare reform package is unleashed into our tribal community. As a tribal community and equal partner we want to work together with those involved in welfare reform to reach long-term solutions that benefit everyone. We look forward to your cooperation and efforts on behalf of Indian people. Thank you for your time and concern in this most critical matter affecting tribal communities.

PREPARED STATEMENT OF BRENDA K. KIRK, DEPUTY DIRECTOR, PROGRAMS OPERATION AND MANAGEMENT, HEALTH DIVISION, CHEROKEE NATION

The Cherokee Nation is pleased to provide testimony at this hearing of the Senate Committee on Indian Affairs.

The Cherokee Nation administers three federal food assistance programs targeted for block granting. These programs service some seventeen thousand Cherokee women, infants, children, and tribal elders monthly. The food assistance provided to these families through the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Farmers' Market Nutrition Program and the Food Distribution Program on Indian Reservations (FDPIR) are a vital link in health promotion and disease prevention efforts of the Cherokee Nation Health Division .

The Cherokee Nation is greatly concerned that block granting of the food assistance programs will result in diminished services to the most vulnerable low income Indian population at greatest nutritional risk. The concern that a decrease in total funding for these programs, the restriction on administrative cost, loss of resources from WIC Rebate contracts, and loss of purchasing power in FDPIR will reduce current services provided to Cherokees at an estimated reduction of fifty percent.

Cherokee Nation opposes legislation that block grants food assistance programs and in partnership with;

The Inter-Tribal Council of the Five Civilized Tribes of Oklahoma, an organization which unites the tribal governments of the Choctaw, Chickasaw, Muscogee (Creek), Seminole, and Cherokee Nations, representing over 300, 000 tribal members throughout the United states adopted a resolution in January 1995 opposing legislation that block grants food assistance programs.

PREPARED STATEMENT OF WILMA P. MANKILLER, PRINCIPAL CHIEF, CHEROKEE NATION

I appreciate the opportunity to present this testimony on Welfare Reform on behalf of the Cherokee Nation, the second largest tribe in the United States with more than 165,000 members.

The Welfare Reform legislation in its present form makes no provision for tribal funding. Congress should immediately make provision for child protection block grants to Indian tribes. The Cherokee Nation currently receives funding annually from; Title IV–B, Child Welfare Services (nationally Indian tribes receive formula-driven funding of about $2 million annually); Family Preservation and Support Services; and Discretionary funding through DHHS and other Federal Agencies. Should Welfare Reform continue as written, the services provided by these funds would cease to exist for Indian families.

Section 430 of HR 4 undermines the Indian Child Welfare Act (25 U.S.C. 1901 et. seq.) This section repeals the Howard M. Metzenbaum Multiethnic Placement Act, which excludes Indian children within the purview of the Federal Indian Child Welfare Act. Congress should immediately restore the provision that excludes the ICWA from HR 4.

In addition, Cherokee Nation has operated programs which assist working families in obtaining child care through the Child Care and Development Block Grant. More than 2,400 children and over 1,400 families have been served through direct assistance since October 1992.

Approximately 1,200 children are assisted directly through this program each month. Thousands of children have indirectly benefited through activities related to licensing, staff training, and early childhood education.

As parents move from welfare to work it is imperative that a system be developed to support working families in their attainment of self sufficiency. The ability to access appropriate, affordable child care is a prime requisite in obtaining and retaining employment.

Tribal CCDBG funds have been allocated at a 3% set aside through the Omnibus Budget Reconciliation Act of 1990. As more Tribes have begun participation in the program since its inception, the 3% of this block grant has not increased in relation to the number of tribes participating. As a result of this increased participation by tribes without concomitant increases in funds, many Tribes maintain waiting lists or incorporate practices in their programs which limit participation of potentially eligible families. At Cherokee Nation we too are currently reviewing Child Care policies to reduce the number of children participating in the program due to funding limitations.

As the United States moves forward in its efforts to reduce welfare dependence and promote self sufficiency, the need for child care will only increase in an already overloaded system. As child care funding streams are consolidated, Tribal governments must have access to the same array of child care funding that is currently available to states in order to provide the necessary support services to Indian people.

The Personal Responsibility Act of 1995, H.R. 4, proposes to limit administrative cost for operation of CCDBG to 5%. This cost restriction would create a system which would eliminate Tribes' ability to access CCDBG funding. It would be impossible for tribal grantees to administer the program and recover indirect costs within these legislative boundaries. Administrative cost must be maintained at 10%–15% to accommodate appropriate administrative support for tribal programs.

Although the states' CCDBG funds which are unobligated may be reallotted to other states, tribes are not afforded this same privilege of accessing unobligated funds. We would request that tribal grantees be afforded the same opportunity as states to fully utilize funds which have been appropriated for child care purposes.

It is also of concern that a matching requirement for child care funds may be initiated in the Senate Welfare Reform package. States have a tax base from which to access matching funds. Tribes do not have such a tax base. Most tribal funds are through the federal granting process and cannot be utilized for matching purposes. Should matching funds be required, consideration must be given to Tribal grantees for exemption from this requirement.

I thank you again, Chairman McCain, for the opportunity to express our views on these extremely important issues. I request your assistance and the assistance of all Committee members, in assuring that any Welfare Reform legislation does not bring hardship on Indian children and families or undermine the government-to-government relationships between the United States and federally-recognized tribes.

PREPARED STATEMENT OF TOM MAULSON, CHAIRMAN, LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

Mr. Chairman and members of the Committee. I am Tom Maulson, Chairman of the Lac du Flambeau Band of Lake Superior Chippewa Indians. We appreciate the Committee holding this hearing to examine the issue of block grants to Tribes on welfare reform and other social services programs. This hearing is an important first step in assuring that Indian interests are adequately protected as Congress moves forward in its consideration of fundamental reform of welfare and other programs for poor people.

We have a number of concerns regarding the welfare reform legislation that was passed by the House. First, the House bill would essentially end the entitlement status for programs for the poor. Families in need of assistance would no longer be assured of receiving benefits to which they are now entitled. This fundamental change in federal policy, if enacted, would have a devastating impact on Indian country—where unemployment and poverty levels are typically far in excess of those suffered by other areas of the United States. Particularly since poverty in Indian country has historical roots in the federal policy of placing tribes on isolated reservations, it would be a grave injustice to limit the federal funds available to alleviate that poverty in the manner contained in the House bill. In short, federal assistance to the poor—at least in Indian country—should not be subject to spending caps.

Second, we are concerned about the provisions in the House bill that would limit eligibility for the Temporary Assistance for Needy Families program—the block

grant successor to AFDC. The bill would not permit assistance to be paid to unwed mothers under age 18, would not permit increases in assistance to families that have additional children while on assistance, and would limit assistance to children as to whom paternity is not established. These provisions will not have their intended effect. Rather than reducing the number of teenage and out of wedlock pregnancies, these policies would simply make life even more difficult for children who already suffer many disadvantages. It is contrary to our traditional values—and fundamentally unwise social policy—to deny benefits to needy children.

Third, the House bill contains work requirements that will cause severe disruption in Indian country. The House bill requires every adult who receives cash benefits for more than 24 months to engage in work activities to continue receiving benefits. But in Indian country, there are simply insufficient job and training opportunities to fulfill this requirement. The result of this provision would be that innumerable Indians would be deprived of needed benefits, not because they refuse to work, but rather because there are no jobs available.

We agree that providing enhanced work opportunities and training is a key to reforming welfare. For this reason, we support preservation of the JOBS program, which would be eliminated under the House bill. We also support increased federal funding for JTPA and other job training programs, to provide our people with the skills and opportunities needed to end reliance on public assistance. But, in the absence of adequate job opportunities, we do not support the House requirement that benefits be cut off after two years, unless an individual undertakes work activities. Given the harsh realities of Indian country, we urge the Committee to include in any welfare reform measure that is enacted by the Senate, a provision modifying the work requirements in areas, such aS Indian reservations, with particularly high unemployment.

Fourth, we oppose the fundamental premise of the House bill—that social service programs should be provided through block grants to the states. This Committee has already heard testimony from the Department of Health and Human Services indicating that social service funds that are block granted to states are not fairly distributed to Indian country. On the contrary, experience has shown that states all too often leave out tribes in allocating federal block grant funding. In Wisconsin, we are currently facing another example of this problem. Governor Thompson is proposing elimination for fiscal year 1996 of two key state programs that serve Indians who are poor—the Relief for Needy Indians and Medical Assistance Programs. These programs, on which many of our needy tribal members rely, are among the first proposed for elimination in the face of a funding shortage by the State. Providing states with broad block grants for welfare and other social services programs, as the House bill would do, would drastically increase the vulnerability of Indian country to state cuts and allocation decisions that disproportionately harm Indian people.

We trust that the Committee will take steps to assure that the Senate welfare reform debate includes consideration of the interests of the tribes. While we are not convinced that block grants are in all instances the best approach for social programs, if the Senate does proceed with block grants, tribes must be included. Federal block grants to tribes would be consistent with the Self-Determination policy that has been the cornerstone of federal-tribal relations for two decades. Moreover, in terms of the ability to design programs and deliver services, tribes are the governments best positioned to serve the needs of tribal members. Thus, any block grants for social programs must include a set-aside for tribes. The set aside must be set at a level that is based not on population alone but on need—as poverty levels remain disproportionately high in Indian country. In addition, block grants to tribes must be implemented without burdensome matching requirements, and with adequate flexibility, to permit tribal programs to meet local conditions.

Again, we thank the Committee for taking the lead on this important issue, and we look forward to working with the Committee as the welfare reform debate moves forward in the Senate.

PREPARED STATEMENT OF CLARA WHITEHIP NOMEE, CHAIRPERSON, CROW NATION OF MONTANA

My name is Clara Whitehip Nomee, I have been the chairperson of the Crow Nation of Montana for five (5) years. Within the five (5) years in office, I have accomplished a lot for my people by regaining the tribes credibility and accountability through this the Crow Tribe's proposed for a hospital was granted and is now in service to service Indian and Native Americans who reside within this area. The Senate passes S. 1216 the Crow Settlement. Act.The Crow Settlement Act settled

a century old dispute that deprived the Crow Nation of 36,000,000 acres of land. This land was promised by the federal government under the 1868 Fort Laramie Treaty. Yet, before the Crow Tribe had the opportunity to begin settling upon this land a surveying error stole away a significant piece of our reservation.

The Crow Reservation is located in south central Montana. It lies within Big Horn County occupying a total of 408,444 acres of trust land. While the reservation itself has an acreage of approximately 2.5 million acres.

According to Bureau of Indian Affairs, Crow Indian Agency Realty department quarterly statistical list by age of all members. There are 9,072 enrolled Crows; 6,500 reside within the reservation boundaries.

According to the 1990 census 52.7% of Indian people on our reservation live in poverty. Like all the other Indian reservation the Crow tribe faces unemployment among its members. Many of the other problems confronting our people are a direct result of the massive unemployment. There appears to be a problem of overcrowding in household as seen when a comparison is taken between, family size number of families per unit and numbered bedrooms. Overcrowding exists in 56.5% of the reservation households.

The Family Support Act of 1988 provided for our tribe and others around the nation an opportunity to launch a program to reduce the AFDC caseload on our reservation. The law enables Indian tribal governments and Alaska Native organizations to receive direct funding to operate a JOBS Program.

The Program offers educational and training component to assist the recipients to become self-sufficient in order to avoid long term dependency on AFDC. As the statistic indicates the Program has and still does assist many clients each year. Each client gets vouchers for mileage and meals for attendance in the required activities, under some of the welfare reform proposals, our tribal JOBS Program would be seriously restricted or even disappear altogether.

The so-called work fare requirements in the Personal Responsibility Act pending in the House of Representatives would force people into dead-end jobs, when they need basic education and training to really be able to make a living.

The Discussion in the Senate about turning AFDC and JOBS entirely over to the states or converting these programs into a state block grants would have the effect of abolishing the tribe's JOBS Program.

Both JTPA and JOBS would be repealed under the Program Consolidation Bills (HR 511 and 5143) now under discussion in the House Opportunities committee and the Senate Labor committee. Unless such legislation preserves separate funding for the current Indian Programs, including the JTPA Section 401 Program. The Tribal component of the JTPA Summer Youth Program and the Tribal component of the JOBS Program, our people are in for much worse times then they already have. The Tribes ability to deal with problems on our Reservation should to strengthened. Specifically, we propose that:

1. The resource for employment and training in the Indian Programs in JTPA, including Summer youth, should be preserved. If JTPA does not continue as a separate program, then the funds should be protected under a Tribal Block Grant.
2. The Tribal JOBS Program should be continued with direct funding from federal government to the tribe.
3. Federal restrictions, which are not appropriate to our circumstance on our reservation should be eliminated and program procedures streamlined. For example, the JTPA Law currently prohibits us from using and JTPA money to fund economic development activities.
4. A special effort should be developed to help us bridge the gap between the present massive poverty and unemployment to a more self-sufficient future. We need jobs now to make it work, not welfare for our people. To do that, we need a transitional JOBS Program linked to stimulating economic development. None of the past or present federal programs has directly addressed this need, it is our most pressing need.

Thank you for the opportunity to express my views about how we can provide a decent future, a working future for the people of the Crow Tribe.

PREPARED STATEMENT OF EVELYN JAMES, TRIBAL PRESIDENT, SAN JUAN SOUTHERN PAIUTE TRIBE, ARIZONA

I am the Tribal President of the San Juan Southern Paiute Tribe of Arizona, I would like to express my appreciation for this opportunity to present our position on the impact of Block Grant-Welfare Reform. Being a leader of the tribe, I strongly want to work through government relationship with the United States. Although many times Indian issues are not big things in the Washington, DC that really

hurts Indian Nations, and we are being denied as not the capable to operate the block grants and welfares or any other programs. Mr. Congressmen, when will the Indian Nations be treated evenly with the states, Indian Nations votes for the U.S. Presidents, Congressmen, Senators, and Governors, to work with our Nations. We all want to survive and get direct federal fundings like the states, because we are the governments. Please learn to trust the Indian Nations to receive federal fundings and get our bills passed. And if you allow the state authority over Indian governments, we are treated like less humans, helpless and criminals. Indian Nations do not want to be treated unfairly by our U.S. Government and the State.

Many times, I wonder why Indian Nations are treated so poorly. Even the Bureau would not increase the tribal budgets, when Congress approves huge amount of dollars that only goes to the states, Indian tribes need funding to survive and be part of the United State of America. Therefore, consider Indian Nations as governments that can plan, organize and protect all the living humans that are on and near the Indian countries. Many times Indians are known as welfare clients, not the directors of the welfare for it's tribal people, we want to improve by managing more federal programs out to the people, please give us that chance to receive direct federal fundings.

I had good experience of the troubles and problems in program services under Area Offices and Agencies during their buyouts and BIA withholding fundings from the tribes, and treating it as budget cuts, when the Bureau has billions of dollars for the States National Park Services and Bureau of Land Management. How long will the Indian governments be suffering from all these authorities put over us, please let our governments be a government as it should be.

Learn to work with our tribal governments directly, because we can handle the program services, since we already are running the tribal government and working through contract programs. I'm sure you wanted to provide the block grants and welfare like the States do, but Indian tribal governments been surrounded by non-tribal members and non-Idians will be worked out to provide services out to them. There will have to be a reform in tribal governments to extend services out to the every body, depending on how many people are living in certain Indian communities. Tribal governments are very willing to accept to work with federal governments on many issues, not only the welfares or the block grants, we have huge list to talk about that never was heard in Washington DC.

And, I would greatly appreciate the time you took to read my issues that bothers me greatly.

Thank you very much.

PREPARED STATEMENT OF JONATHAN L. TAYLOR, PRINCIPAL CHIEF, EASTERN BAND OF CHEROKEE INDIANS

Honorable Senator McCain and Distinguished Members of the Senate Indian Affairs, I am Jonathan L. Taylor, Principal Chief of the Eastern Band of Cherokee Indians. Thank you for providing me the opportunity to submit written testimony. Our Tribe consists of 10,700 members and our reservation contains 56,000 acres. We are located in the western part of the State of North Carolina, directly adjacent to the Great Smoky Mountain National Park.

Treaties forged between the United States and Indian leaders during the last two centuries created the foundation of Indian Law. These treaties with Congress recognize the existence of sovereign governments within the boundaries of the United States. As part of these agreements, the United States entered into a unique trust relationship with Indian tribes. President Clinton affirmed that his administration would give tribal government say in distribution of federal funds geared toward economic growth, affordable health care and improved education.

I received notification that Indian Affairs Committee has scheduled a hearing on Indian issues in Welfare Reform for Wednesday, April 5, 1995. On behalf of the enrolled members of the Eastern Band of Cherokee Indians, I wish to express my sincere concern regarding the impact the Recession Bill would have on Indian programs. If the Recession Bill eventually becomes law, it will have a devastating impact on Indian country.

The Welfare Reform Bill, HR 1157, approved by the House Ways and Means Committee of the House of Representatives has taken on the initiative of writing legislation that would completely restructure the federal programs. Recommendations in reductions in the education and job training programs is of great concern to our Tribe. It is clear that this bill discourages education and job training. Congress is agreeing to a bill that would wipe out all tribal funding for the JOBS participants, JTPA Summer Youth Program for both this summer and next year and reduce the

JTPA Section 401 funds by 10% in program year 1995, which begins in July. The Department of Labor has estimated that 2,700 fewer Native Youth and Adults would be served if the recession bill is approved.

All my life I have heard our local, State and Federal officials preach education and economic development as the keys to our future. To severely cut our already conservative efforts in this direction, is most definitely "penny wise and pound foolish."

The proposed legislation would completely restructure the federal programs providing Aid to Families With Dependent Children (AFDC). Any legislation of this type will have a major impact on the quality of life and on poverty conditions in Indian reservation areas and Alaska Native communities. There are an estimated 150,000 to 175,000 Native people in these areas who now receive AFDC benefits.

Welfare reform can succeed in Indian country only if it reduces, not reinforces dependency. This means that it must contribute to the creation of new job opportunities in the areas with the highest rates of unemployment in the country. It also means that it must assist potential adult wage earners in qualifying for, obtaining and retaining employment.

Welfare-to-work services in reservation and Alaska Native communities must be provided by tribal governments, with federal financial assistance. Tribal governments are the primary providers of services to Native people in Native communities. Tribal governments have a direct relationship with the federal government, established in the United states Constitution.

Indian Tribes and Alaska Native organizations have made major strides in reducing welfare dependency through services provided under the Job Opportunities and Basic Skills (JOBS) program authorized by the Family Support Act of 1988. Nationally, 77 Indian Tribes, Inter-Tribal Consortia and Alaska Native organizations receive direct federal funds under the current JOBS program. It Supports education, employment and training services in Native communities.

This program provides direct funding to tribal governments from the U.S. Department of Health and Human Services. The money is not channeled through the states and there is no matching share. Tribal JOBS programs reported over 2,000 job placements in the most recent year for which data is available. These placements were achieved despite joblessness rates which average over 50% across Indian country.

On March 8, 1995 the House Ways and Means Committee representatives approved a welfare reform bill, HR 1157 that would end all current efforts to reduce welfare dependency in Indian Reservation areas and Alaska Native Communities. This would mean abolishing all funding for the JOBS programs now serving Indian people. Funds now being distributed to Indian Tribes and Alaska Native organizations would be eliminated and the JOBS money now going directly to tribal governments would go to state welfare agencies as part of the bill's cash welfare block grant. No money would go to tribes even though tribes have successfully operated JOBS programs for over five years. Tribes would not receive any assurance that services to reduce welfare dependency will be available in reservation areas.

The welfare reform bill would allow States to have complete freedom to choose what services to provide and which communities to provide them to. Most reservation areas will be denied services because of their geographic remoteness, their lack of employment opportunities and the fact that states consider services to Indian people primarily a federal responsibility. This would also end cash benefits regardless of whether recipients want to go to work but are in areas where no job opportunities are available to them. Needy families would be denied benefits if they have received assistance for two years and are not working or if they have received assistance for five years in their lifetime.

Eliminating the Tribal JOBS programs would eliminate any assurance of child care services for those in education, training or work programs or as needed to help them retain employment. The House Ways and Means Committee bill would do nothing to reduce welfare dependency in reservation areas or Alaska Native communities. It would deepen poverty by ending cash benefits for many and by terminating the services necessary to help Native people attain self-sufficiency.

In order to make welfare reform effective in Indian country, it must support programs to reduce dependency by increasing employability. We feel the Federal law should continue to authorize special employment and training services for welfare recipients in reservation areas and Alaska Native communities. These programs should be directly funded by federal government to tribal governments and be controlled by tribal governments. Tribes should continue to offer work experience opportunities which are available while a person is receiving any form of cash benefits and afterwards for those who can't find other jobs. Tribal programs should be provided the flexibility to provide support for economic development so they could help

create new jobs for employable people now dependent on welfare. Welfare reform can work in Indian country but it will only work if it includes the services necessary to reduce, not reinforce dependency.

The Federal Government should be committed to support Tribal sovereignty and pursue the government-to-government relationship between the Federal Government and Tribal Governments. A heightened optimism now exists in Indian Country and it would certainly be disheartening to deny our adults and youth the opportunity to gain an education and insure job training sills. Modern Indian Tribes have made extraordinary advances from a situation that, just two generations ago, seemed hopeless. Finally our adults and youth have been provided programs that would provide them a means of continuing their education and becoming gainfully employed. This has allowed them to become self-sufficient, tax paying citizens contributing to their community and their country.

So again, Mr. Chairman, we are expressing some heartfelt burdens the Cherokee's will face due to the budget restraints affecting the quality of education, job training, child care, medical care and economic development of the Cherokee Tribe. Your participation in recognizing tribal sovereignty, upholding the federal trust responsibility and building a tribal-federal relationship based on mutual cooperation and respect.

In closing, Mr. Chairman and Distinguished Members, I would like to extend my appreciation to you for providing me the opportunity to present this testimony. The Eastern Band of Cherokee Indians has enjoyed an extended and productive relationship with Congress and this Committee and we are extremely grateful for the Support and understanding you have provided to the Cherokee Tribe. Your consideration and supportive efforts in helping us continue valued services provided to our disadvantaged adults and youth is gratefully appreciated.

PREPARED STATEMENT OF EDWARD K. THOMAS, PRESIDENT, CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

Central Council, through its Employment and Training Department is currently administering a Job Opportunity and Basic Skills program (J.O.B.S.), and has been since it's enactment in 1989.

CCTHITA serves the health, educational, employment, human and public service needs of more than 22,394 Tribal members mostly residing in Southeast Alaska. Our service delivery spans over 20 communities in Southeast Alaska 20 of which are rural communities. the only method of travel is by aircraft or by boat. With industries i.e., logging and fishing, slowing down and/or closing we are finding more Tribal members on A.F.D.C., rolls. In many of the rural communities the unemployment rate is as high as 80%. Resource within these communities are limited, and to relocate a client for purposes of training or employment can be costly.

In Southeast, or Tribal A.F.D.C., caseload includes 442 adults and 922 children. Funding has allowed us to serve 30 participants in the following J.O.B.S., program components. Activity Participants Adult Basic Education 2 GED Preparation 3 Vocational 12 Post Secondary 5 On-the-Job Training 1 Work Experience 1 Job Search 6

Many of our Tribal J.O.B.S., participants become successful and no longer dependent on A.F.D.C. This is attributed to through planning and integration of services. This year we placed over 32 Tribal members into unsubsidized employment, (bringing our placement since 1989 up to 198 placements into unsubsidized employment). We have more than doubled the number of participants required in our J.O.B.S. plan.

Recommendations

We believe welfare reform can make a positive difference in the wellbeing of our families, but it is necessary to include me following employment and training components:

1. Recognize the government-to-government relationship between our tribe and the federal/state government and enable our tribal government to serve our people.
2. Continue to authorize tribal set-asides for tribal J.O.B.S programs.
3. Stimulate economic development to insure that there are jobs for all our people, including those dependent on public assistance.
4. Strengthen me kind of services we now offer under our Tribal J.O.B.S program by enabling us to serve more people and by providing direct funding to our tribe for related child care services and work slots.
5. Federal contracts must be to hire locally, at no less than 60% local hire.

We believe the problem is not the J.O.B.S. program, but rather the structure of A.F.D.C., in general. For the past 60 years A.F.D.C.'s sole purpose was to assist

needy children without fathers. It appears that the system failed the people. The people did not intentionally fail the system.

The time limits on A.F.D.C benefits proposed by President Clinton, as well as those being considered in the Congress, assume that there are jobs available for A.F.D.C., recipients. This is unrealistic especially in rural communities. Welfare Reform won't work if there are no jobs at the end of reform.

The two-year time limit would increase homelessness and family breakdown. When you promote penalties such as this, you run a risk of eviction or inability to pay for immediate needs. The mandatory provision that minor mothers live at home increases the risk that teen mothers might be returned to abusive environments.

State-initiated changes in A.F.D.C., can have very adverse impacts on our people. We need strong collaboration between agencies, between the Department of Labor and Department of Education, in the development and creation of employment and educational opportunities, more importantly we need to expand those opportunities and resources to rural communities, especially in the area of economic development. In Southeast Alaska only two communities are served by State of Alaska Work Programs, eliminating the remaining 18 outlying communities. Because of remoteness, A.F.D.C., recipients Native and Non-Native, residing within those areas fall through the cracks.

At a public forum held in Alaska, October 5, 1994, it was stated "many A.F.D.C., recipients are looking toward a hand up, not a hand out....people must return to traditional cultural roots, me mind is the key to healing, we live by encouragement, A.F.D.C., recipients who do not receive it die slowly and quietly."

General Assistance (GA/Tribal Work Experience monies are currently slated for a potential 50% cut in funding levels. If a large number of A.F.D.C., recipients are cut from the welfare rolls, G.A., will not necessarily be available to act as a safety net. Anyone who is eligible for A.F.D.C., or S.S.I., is not eligible for BIA General Assistance.

The BIA General Assistance program does not include service equivalent under J.O.B.S. For Tribes and Alaska Native organizations to have influence over any of these issues, congressional delegates and committee leaders must be made aware of the role these programs play within Native communities and families.

Federal law currently provides no role for Tribal governments in this area. This has created serious jurisdictional conflicts between Tribal and state courts. It has been a major subject of a congressionally mandated review of the interstate aspects of Child Support Enforcement. Federal law should recognize the role of Tribes as sovereign nations with a direct government-to-government relationship to the federal government.

Tribal programs should be encouraged, along with cooperative tribal-state programs that recognize the interest of Indian families. We encourage the committee to seek the recommendations of the task force on child support enforcement created by the nation's largest intertribal Indian organization, the National Congress of American Indians (NCAI)

In closing, I thank you for the opportunity to testify on Welfare Reform on behalf of our Tribal members. I will be happy to answer any questions you may have.

PREPARED STATEMENT OF JACK F. TROPE, COUNSEL TO THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.

Please accept this testimony for the record on behalf of the Association on American Indian Affairs, Inc. (AAIA). AAIA is a national Indian rights organization headquartered in New York city with field offices in South Dakota and California. The Association has worked with tribes for more than 75 years on issues such as child welfare, the development of tribal programs, the exercise of sovereignty and the protection of indigenous religious rights. As part of its work, AAIA has long been involved in the effort to obtain adequate tribal funding from federal block grants. In 1988, Congressman Udall introduced a bill at AAIA'S request which would have provided for direct tribal funding from the Title XX Block Grant program, Titles IV–B and IV–E of the Social Security Act and the Alcohol, Drug Abuse and Mental Health Block Grant. In .1990 and 1991, AAIA was invited to testify on these tribal funding issues by both the Subcommittee on Social Security and Family Policy of the Senate Finance Committee and a subcommittee of the House Ways and Means Committee. Moreover, AAIA has actively worked with House and Senate staff on these issues for the last several years.

AAIA enthusiastically applauds Senator McCain's commitment to ensuring that tribes receive an adequate allocation from welfare reform block grants that are created, as well as the introduction of S. 285 which would provide for tribal funding

from the existing Title XX block grant. Indeed, Senator McCain's statement in the Congressional Record on March 8, 1995 summarizes AAIA's position on tribal allocations from block grants as well as any testimony that the Association might submit.

As that statement recognized, if solutions to the problems of joblessness and other devastating social problems faced in Indian communities are to be developed, the locus of such efforts must be the Indian tribe. Tribal governments are the entities best situated to provide such services to their communities for several reasons:

Indian tribes are "domestic dependent nations" with inherent sovereign powers. They have a direct government-to-government relationship with the Federal government and are not subdivisions of the states.

History has shown, and the recent HHS inspector general report confirms, that states do not generally pass through block grant funding to tribal governments.

Tribal programs are more attuned to the special programmatic and cultural needs of their local communities and have experience in operating quality programs when resources are available. For example, a 1988 study commissioned by the Departments of HHS and Interior, showed that tribal child welfare programs were, in many ways, outperforming state systems, notwithstanding unreliable and inadequate funding sources.

Today's reality is that job training, social services and other supportive programs for Indian communities are woefully inadequate. In 1988, AAIA analyzed the entire Federal budget to determine the level of funding for Indian social services programs at that time. The total expenditure amounted to approximately $100 million from all sources, less than $60 per Indian person. Moreover, many of the funds included in that $100 million were "one-time only" appropriations, not ongoing funds, and much of the money appropriated was wasted by the federal bureaucracy. This inadequate budget for Indian social services is part of a larger budgetary problem identified in the Congressional Research Service Report, "Trends in Indian Related Federal Spending—fiscal year 1975–91". In that report, CRS found that in constant dollars Federal spending for Indian programs decreased by 2.11% annually during that time period, whereas overall domestic spending increased by 2.01% annually.

In order for tribes to begin a systematic counter-offensive against their pressing social problems and reduce the dependency of Indian people upon government programs, tribes must receive consistent and adequate funding. The block grants that will be created by the welfare reform legislation, as well as existing block grants such as Title XX, provide perhaps the best source of such funding. Indeed, in view of the status of tribes as domestic dependent nations and their special relationship with the Federal government, it is long overdue for tribes to receive direct allocations from these programs just as do American Samoa, the Northern Mariana Islands and the virgin Islands from current block grants. In recent years, tribes have received direct funding from a variety of generic federal programs, including the Child care and Development Block Grant, Community Development Block Grant, Job Opportunity Basic Skills Training, Job Training Partnership Act, Title IV–B Family Preservation and Support Services, Title IV–B Child Welfare Services, Vocational Rehabilitation Act, Clean Water Act and the Low Income Energy Assistance Program.

Thus, AAIA proposes the following:

A 3% allocation to Indian tribes from any block grants created by the welfare reform bill, as well as from Title XX.

The formula by which the funds are to be distributed to tribes should be determined by HHS, with the full participation of tribes, taking into account the need of tribes for a base formula, tribal economic, geographic and demographic conditions and tribal administrative capacity.

Tribal plans to be developed should be based upon unique tribal circumstances with criteria to be developed by HHS with the full participation of tribes.

Tribes should have the ability to access all, or only some of the block grants, and to phase in their involvement.

Tribes should have the ability to contract with a state or private entity to administer services for the tribe.

Planning funds should be provided to tribes out of the 3% allocation to enable them to develop the necessary plans.

Funding to tribal consortiums should be permitted.

Tribes should be provided with flexibility in the use of the funds similar to that provided to states.

Coordination between tribes and states should be required to ensure that Indian people receive adequate services.

Indian people and off-reservation Indian programs should continue to be eligible for state programs, with the caveat that this does not mean that an individual should be entitled to receive duplicate benefits.

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Unclaimed funds should be reallocated to Indian tribes which have submitted plans to access the funds.

Attached as an appendix for your consideration is a proposed tribal funding amendment to Senate welfare reform legislation which incorporates these principles. This amendment has been developed by AAIA, in conjunction with the National Indian Child Welfare Association and the National Congress of American Indians. Its framework is based upon S. 285.

AAIA looks forward to working with the Committee to ensure that adequate tribal amendments are included in the welfare reform legislation. Thank you for the opportunity to submit this testimony.

TRIBAL AMENDMENT TO WELFARE REFORM LEGISLATION

Sec. (a) Notwithstanding any other provision of law, 3 percent of the total amount appropriated pursuant to each Title in this Act and section 2003 of the Social Security Act (42 U. S. C. 1397b) shall be made available for distribution to Indian tribes.

(b) Not later than 180 days after the date of enactment of this subsection and With the full participation of Indian tribes, the Secretary shall establish and promulgate by regulation a funding formula for distribution of the funds provided to Indian tribes pursuant to this section which takes into account the need of Indian tribes for a base funding formula. The Secretary shall also consider such additional factors as the Secretary determines appropriate, including unique geographic, economic, demographic and administrative conditions of Indian tribes, tribal reservations and tribal service areas.

(c) The Secretary shall establish criteria, with the full participation of Indian tribes, for the submission of plans by Indian tribes for the provision of services pursuant to the grants provided by this section. Such criteria shall take into account the unique geographic, economic, demographic, social and cultural characteristics of Indian country.

(d)(1) A tribe may submit a plan to access all, or only some, of the block grants covered by this section. In the case of the [AFDC block grant whatever it may be called], an Indian tribe may submit a plan to access only —— % of the amount to which it would be entitled, in which case the state shall continue to be primarily responsible for the provision of direct cash assistance to Indians within the tribe's service area which shall be provided on the same basis that cash assistance is provided to non-Indians.

NOTE: This provision is meant to allow tribes to access only the "services" portion of AFDC and not the cash assistance part should they so choose. In the House bill, programs like JOBS were combined with AFDC into one block grant. We have left the percentage blank in our draft amendment because we do not know currently what percentage of the dollars from the programs that will be folded into the block grant will come from "services" programs and what percentage will come from the "cash assistance" part of AFDC.

(2) Any Indian tribe which opts not to administer programs under this Act may enter into a cooperative agreement with the appropriate state or private agency to provide such services to tribal members utilizing the funds to which the tribe is eligible under this section.

(3) Funds that are not distributed to Indian tribes during a fiscal year shall be available in subsequent fiscal years for reallocation to Indian tribes which have submitted plans for accessing funds under this section.

(4) Upon request of an Indian tribe and prior to the submission of a plan by the Indian tribe as required by subsection (c), the secretary shall make available funds not to exceed 20% of an Indian tribe's allocation from a particular block grant for the purpose of allowing the Indian tribe to develop a plan for future operation of that particular block grant program. Such planning funds shall be provided on a one-time basis only for each of the block grants covered by this section.

(5) The failure by an Indian tribe to submit a plan for all, or some block grants under this section in the initial fiscal year after this Act takes effect shall not prevent an Indian tribe from submitting a plan accessing those funds in future years.

(e) An Indian tribe may enter into an agreement with other Indian tribes for the provision of services by a tribal consortium providing for centralized administration of services for the region served by the Indian tribes so agreeing. In the case of such an agreement, a single plan may be submitted by the tribal consortium and the consortium shall be entitled to receive an amount equal to the amount that the tribes would have received had they applied separately. In any case in which a plan is submitted by a tribal consortium, the approval of each Indian tribe included in the consortium shall be a prerequisite to the disbursal of funds to the tribal consortium.

(f) An Indian tribe may transfer up to 30% of the amount of any block grant funds received pursuant to this section to welfare, social services or related services or programs operated pursuant to a compact or contract authorized under the Indian Self-Determination Act (25 U.S.C. 450 et seq.) or to other welfare, social services or related grants which the tribe administers, including all block grants covered by this section.

(g) Indian tribes and states shall seek to coordinate their programs and services provided pursuant to this Act to the maximum extent possible.

(h) Nothing in this section shall be construed to——

(1) serve as an authorization to limit the eligibility of any Indian to participate in any program offered by a state or subdivision thereof, provided that this shall not be interpreted to permit any Indian to receive duplicate benefits from both an Indian tribe and a state;

(2) preclude or discourage an agreement between any Indian tribe and any state that facilitates the provision of services by the Indian tribe to the service population of the Indian tribe or by the state to Indians living within the state; or

(3) authorize the state to discriminate against Indian controlled, off-reservation programs serving Indian people.

(i) For purposes of this section——

(1) the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement ACt (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United states to Indians because of their status as Indians;

(2) the term 'tribal consortium' means any group, association, partnership, corporation or other legal entity which is controlled, sanctioned, or chartered by the governing body of more than one Indian tribe; and

(3) the term 'Secretary' shall mean the Secretary of Health and Human Services.

PREPARED STATEMENT OF EDDIE PALMANTEER, JR., CHAIRMAN, COLVILLE BUSINESS COUNCIL, COLVILLE CONFEDERATED TRIBES

The Colville Tribe wishes to state at this time, our position on the impact that the proposed Welfare Reform bill, HR 1214, Will have on our Tribe. It is our understanding that the tribal components of the JOBS Program would completely disappear under the implementation of this bill (HR 1214).

Presently, 77 tribal governments and Alaska Native organizations are funded to provide JOBS services. An average of 5,000 employable adult Indian and Alaska Native people on AFDC are served by tribal JOBS Programs in an average quarter. Tribal JOBS Programs reported over 2,000 job placements in the most recent year. These placements were achieved despite a unemployment rate which averages over 50% across Indian Country.

A summary of accomplishments and statistical data for fiscal year 94 for the Colville Confederated Tribes JOBS Program to assist in alleviating welfare dependence are:

High School & GED Graduates	30
Job Skills Training Graduates	40
Post Secondary Graduates (B.A.)	68
Completion of Job Skills (Certificate)	14
Job Placement/Job Development	10
Total JOBS Participants Served	233

We cannot stress to you how important it is that the tribally-based "welfare-to-work" programs like JOBS be continued. Indian tribes and Alaska Native organizations have made major impacts in reducing welfare dependency through services provided under the Job Opportunities and Basic Skills (JOBS) Program authorized by the Family Support Act of 1988.

In "The Family Support Act of 1988" it embodied a consensus that the well-being of children depends not only on meeting their material needs, but also on the parents' ability to become economically self-sufficient. The law is based on the premise that self-sufficiency and family responsibility are necessary and achievable goals, and makes education, training, and child care available to help individuals to reach these goals. The law recognizes the mutual obligations of parents, who are currently

dependent, to work toward self-sufficiency through employment and that the government support their effort.

Within Indian and Native Alaskan populations, there are aspects in the determination of needs which must be addressed to allow the "processes toward self-sufficiency and economic stability" to be effective. We are more sensitive and able to consider the social, physical, emotional, spiritual and cultural components Which play a major part in the act of becoming self-sufficient.

Included in that memorandum from the President, dated April 29, 1994 for the Heads of Executive Departments and Agencies in reference to the "GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE AMERICAN TRIBAL GOVERNMENTS" it states that:

"The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statues, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments."

This is another reason why we are requesting that Indian and Native Alaskan people be granted direct funding by releasing a percentage of the state block grants of any welfare reform bill to help support our tribal programs. It is our right as a federally recognized Tribal entity.

We acknowledge that there are certain criteria as to the implementation of the block grant moneys. Also, that stringent guidelines are to be followed before any assistance would be granted and we are willing to work with the federal government to assure compliance. We want to insure our Tribal members are given every opportunity and encouragement to become "self-sufficient" not only to benefit the individual and our Tribe, but society as well. You must also realize that in order for this to become possible it is essential that we be allowed a percentage of the block grant money. That we be allowed to design and deliver our services under this program with flexibility in a way that our tribe considers most effective in its circumstances considering our consumers special needs. We also ask for funding to assist in training programs and employment services to assist Native families get off welfare and to work. However, this must be part of the welfare reform or job training legislation and not just an "allowable activity" within our programs. True self-determination in any society of people is dependent upon an education process which will insure the development of qualified people to fulfill meaningful leadership roles.

U.S. DEPARTMENT OF LABOR,
EMPLOYMENT AND TRAINING ADMINISTRATION,
Washington, DC.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

Dear Senator McCain: This is in response to your request of March 15, 1995 to testify before your Committee on our programs for Native Americans.

I sincerely regret that my schedule does not permit me to accept your invitation. Nonetheless, I do believe that the testimony provided by Ms. Josephine Nieves, Associate Assistant Secretary for Employment and Training before your Committee on March 7, and 20, 1995 expressed fully the Administration's views for not consolidating the JTPA Section 401 program as was well as the critical need to continue the summer youth program funded pursuant to JTPA Title II.

If I might summarize the two testimonies, they enumerated the following points:

First, we believe it is essential to retain and administer employment and training programs serving Native Americans in a way that promotes local initiative and respects Indian cultural values. Because of that, the JTPA Section 401 program is not part of the President's proposed G.I. Bill for America's Workers. Therefore, there would continue to be separate funding for tribal government, just as there is now under JTPA. This is consistent with the President's commitment to tribal leaders and their independence from State governments. This is also consistent with local

control and empowerment, and with P.L. 102–477, The Indian Employment, Training, and Related Services Demonstration Act, which already provides tribes with an excellent opportunity to consolidate federally funded programs together to meet their unique needs.

Tribal governments and Native American-controlled organizations represent local self-determination as much as the state governments do for the states. Proposals to consolidate Indian programs with state block grants undermine the very essence of shifting funds, power, responsibility and accountability for such programs to local governments, like Indian tribes, which are closest to the people to be served.

Second, the House Budget Rescission Bill would reduce fiscal year 1995 funding for the JTPA 401 Indian and Native American program by 10%—from $6.1 million to $57.7 million. This would result in approximately 2,700 fewer Indian and Native American adult and youth receiving training supportive services through our section 401 program. In addition, the rescission would entirely eliminate the Title II–B Summer Indian Youth program for calendar years 1995 and 1996. This represents approximately $15.8 million that will not be spent on Indian youth each year for this critically important program. If this action is sustained, 130 Indian JTPA Summer Youth programs will be eliminated. This summer these program would serve over 11,000 Indian, Native Alaskan and Hawaiian Native youth residing on federally and State recognized reservations, in Alaska Native villages and Native Hawaiians residing in Hawaii.

Summer earnings average about $845 in gross wages per youth. The loss of these dollars will make a tremendous difference in Indian country. Given the weak economic conditions of many of these areas, it is doubtful that the lost job training opportunities that provide earned income could be compensated for in the private sector, which exists to a very limited extent in many of these places served by this program.

Money normally earned to purchase new clothes, shoes, books and other school materials will simply not be available. In the most severe cases some youth may even have to drop out of school to work to help support their families.

Consistent with past practices, we issued Summer Youth planning instructions this February and we have instructed grantees to go forward with their Summer Program plans pending the final congressional action on the rescission.

I hope this is responsive to your concerns and I would be pleased to provide any additional information you desire.

Sincerely,

DOUG ROSS

CALIFORNIA INDIAN MANPOWER CONSORTIUM, INC.,
April 3, 1995.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

Dear Senator McCain: On behalf of the California Indian Manpower Consortium, Inc. (CIMC) Tribal Job Opportunities and Basic Skills (JOBS) Program, serving 52 reservations throughout the State of California, we respectfully submit this letter to your Committee for consideration as you begin deliberations on the Welfare Reform legislation. Please include this statement in the record of the Committee's hearing on welfare reform.

We request that Indian concerns incorporated into any welfare reform legislation recognize the government-to-government relationship between the federal government and Indian tribes and funding continue to be provided directly to tribes for our welfare-to-work programs. Funding for services currently provided by Indian Tribal JOBS programs must continued to go directly to the tribes either through a set-aside process in any basic AFDC block grant or through a tribal block grant process. We also request direct funding for child care and for support of tribal economic development efforts to provide more job opportunities for welfare recipients in reservation areas.

The CIMC JOBS Program has been able to provide hope and success for tribal JOBS participants who previously did not have the motivation or encouragement to be free of the public welfare system.

CIMC JOBS Program staff stress the importance of education to our participants. With a solid foundation of basic skills, our participants can proceed to further their self-sufficiency goals. This could include obtaining a high school diploma or GED,

for advanced vocational education, in such career fields as nursing, correctional officers, managements and secretarial sciences.

We at the CIMC JOBS Program believe that an individual holistic approach is vital to the success of every participant. Accomplishments in the CIMC JOBS Program within the basic skills area has been successful. Participants who have entered a basic skills/GED program have taken substantial time to complete, due in part to the length of time most of the tribal JOBS Program participants had been out of the education system. Most of the tribal JOBS participants required encouragement and assistance in overcoming barriers that could have prevented them from completing their specific educational goals.

Our success stories here at the CIMC JOBS Program span the range from simply straightforward to the complex. Regardless of the circumstances we have been able to improve the lives of our participants. This has been achieved through our uniquely tailored JOBS Program which addresses the specific individual needs of our participants here in Indian Country. There is no doubt that, had the CIMC JOBS Program not been in place, a larger number of tribal members would still be on AFDC.

Numerous participants have informed the JOBS Program Coordinators that they had been exempted from participation in the local GAIN (Greater Avenue for Independence) Program. They were not given the option to participate because they lived in a remote area, or had young children. Furthermore, it was apparent that those individuals who were placed in the GAIN Program, for participation, did not receive much useful assistance. Options were very limited, and funding for child care was always a problem. Individuals were often inadequately assessed and placed into activities in which there was no interest or promising employment outlook.

Without programs such as ours, tribal AFDC recipients in Indian Country will not have access to the tools that will allow them to become self-sufficient. Frequently we deal with tribal AFDC recipients who do not possess the knowledge or understanding on how to reach their employment goals. Unfortunately, local welfare programs do not address the unique needs of our people, and without this understanding, the local welfare departments find it much easier to exempt an Indian person than to give them the required attention that will allow them to become self-sufficient.

It is our belief that with our current program design and our willingness to work closely with our participants that our program will continue to show success with the tribal members who are receiving AFDC.

Please protect our tribal interests and the government-to-government relationship with tribes in your deliberations. Thank you for considering our request.

Sincerely,

LORENDA T. SANCHEZ, *Executive Director.*

TESTIMONY OF RAY HALBRITTER
NATION REPRESENTATIVE
ONEIDA INDIAN NATION
REGARDING H.R. 4

BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

Mr. Chairman and Members of the Committee, thank you for the opportunity to submit my written testimony. My name is Ray Halbritter. I am the Nation Representative of the Oneida Indian Nation. I am providing written testimony to the Committee on Indian Affairs through the invitation extended to Indian governments by your esteemed Chairman, Senator John McCain.

First, let me give you some general information about our Nation. The Oneida Indian Nation has over 1000 enrolled members principally residing in a nine county area in central New York. Our traditional form of government predates the Constitution of the United States, and to this day our Nation continues to exist as a sovereign, independent government recognized by the United States.

The Oneida Indian Nation has had a long relationship with this country. As an example, during the American Revolutionary War, the Oneida Nation people fought alongside the patriots, risking their lives and homes. At one of the bleakest points in the war, the Oneida people in mid-winter carried over six hundred bushels of corn on their backs two hundred miles to feed George Washington's starving army at Valley Forge. The Treaty of Canandaigua, signed by the United States in 1794, guarantees the Oneida Indian Nation its sovereign right to govern its land and affairs in gratitude for the loyalty, courage and suffering of the Oneida people.

The Oneida people once inhabited six million acres, from the St. Lawrence River in the north to the Susquehanna River in the south. Despite our rich heritage, however, the Nation was

reduced by this century to only thirty-two acres that had no water and septic systems, dilapidated, unsafe housing, and a muddied, pot holed one lane road. Just a few years ago the Nation's sole source of income, a smoke and gift shop, generated only $150 per week — not nearly enough income to sustain a family, let alone a community.

The Nation was determined, however, to move out of poverty and powerlessness by exercising our sovereign treaty rights. In 1989 the Oneida Nation exercised its right as a federally-recognized Indian nation to contract with the United States for the first time, and obtained federal funds to establish a health program for the people and to assess their health-related needs. At the same time, the Nation pursued its economic self-sufficiency through the development of its own enterprises. In 1991 the Nation established three long range goals that guide all development within the Nation:

1. To implement the legal and administrative structure for the protection of Nation sovereign rights and actualization of government relations.

2. To help our members achieve their highest potential in education, physical and mental health, and economic development.

3. To acquire, develop, and secure resources to achieve economic and social self-sufficiency for the Oneida Indian Nation.

From this beginning, the Nation in less than five years developed the facilities and administrative capacity necessary to deliver over fifty programs and services to our members and other Indian people. This entailed securing federal program dollars through Public Law 93-638 contracts and through grants, formula grants, and discretionary grants. The Nation also utilized its own resources, derived from our successful enterprises including Turning Stone Casino, Villages at Turning Stone RV Park, Oneida Textile Printing, Oneida Nation Bingo, Oneida Petroleum

Services, and Oneida Smoke and Gift Shops. The Oneida Nation strives to blend the entrepreneurial spirit of its enterprises with the community development aspects of its government to create a better life for the Oneida people of today, and for the seventh generation to come.

Our Nation emerged from poverty and powerlessness based on our own vision and initiative, and through the unique status we hold as a sovereign nation recognized by the United States. We were and are able to use the laws of the United States, such as the Indian Gaming Regulatory Act and the Indian Self-Determination Act, to pursue social and economic opportunities that advance the goals of the Oneida people. We are a people of vision and progress committed to the responsible development of our Nation for our people, now and unto the seventh generation. What we require of the federal government is similar responsible action through the provision of laws, regulations, and funding that adequately and justly address the needs of all Indian people in relation to their unique status as sovereign nations.

COMMENTS ON H. R. 4, THE PERSONAL RESPONSIBILITY ACT

The Purpose of H.R. 4

The Personal Responsibility Act, H.R. 4, has five primary objectives: (1) turning over programs to the states to run under a block grant system, (2) capping federal welfare spending, (3) consolidation of food assistance programs, (4) restricting eligibility for welfare, and (5) requiring work for welfare recipients. This bill attempts to manage many aspects of personal life, including when people have children, who they marry, where they live, where they work, and by whom their children are raised. Indian people, perhaps more than any other group, know what it is like to have the federal government dictate social and personal conduct.

Omission of Indian Governments

With the exception of the proposed changes to the food commodities programs, Indian nations and Indian governments are not referenced in the bill. Under this bill, basic aspects of the personal lives of many Indian people and the social fabric of Indian nations will once again be controlled by non-Indian state governments pursuant to mandates dictated by the federal government. The social issues addressed by the Personal Responsibility Act are issues that are best left to individuals and Indian governments to address. The omission of the role of Indian governments may be inadvertent, but the effect of this bill on Indian country could be disastrous if that omission is not corrected.

Summary of The Personal Responsibility Act

Indian nations would be eligible to participate in the food assistance block grants as they are specifically identified in H.R. 4, but nations would not have the option to participate in the AFDC block grant program.

The Act would eliminate numerous existing welfare programs and replace them with block grants or remove their entitlement status and place them under severe spending limits. These limits would impact Family Support, Supplemental Security Income (SSI), Housing Aid, the mandatory work program and the JOBS program. Currently most welfare programs are entitlement programs, in that the need sets the funding level. Funding for these programs would now be subject to the appropriations process, which historically has not been responsive to the interests and concerns of Indian people. The bill's spending caps encompass deep cuts in these low income programs. Even with restricted eligibility, the reduced funding may result in too few funds to meet the needs of those individuals who remain eligible under the new rules. Other

government programs, such as the BIA General Assistance program, will become severely overburdened trying to meet additional needs.

The title of the welfare reform bill relating to the consolidation of food assistance programs is the only title of the bill in which Indian nations would be included in the administration of a block grant program. Indian nations would be defined as states under the bill and be given a 2.4 percent set aside. The overall national funding levels authorized in the bill represent a substantial reduction from the amounts currently spent on these programs. If funding for food assistance programs is reduced drastically, the Indian share would presumably receive a sizeable reduction as well.

Illegitimacy

One of the primary objectives of this legislation is the reduction of "illegitimacy." The bill creates numerous federal mandates designed to restrict eligibility for welfare programs. These mandates attempt to define to welfare recipients who they marry, when they have children, when they will be permitted to keep their children, and where they live. The legislation would not change the state run nature of the program. As a result, the federal government would establish mandates with which the state governments must comply. Indian governments would still have no supervisory role in the Aid to Families with Dependent Children (AFDC) program, and would not have input into government attempts to address teen pregnancy, childbirth decisions and marital decisions of AFDC recipients living on Indian land. These are issues that affect the basic social fabric of Indian nations. If any government should play a role in these matters, it should be the Indian government.

Paternity

The bill would deny AFDC benefits to any children whose paternity cannot be established, unless the child was conceived as a result of rape or incest, or if the state determines that efforts to establish paternity would endanger the child. If the mother or other relative claiming aid on behalf of the child is unable to identify the biological father they would have to provide the state with the names of three individuals who might be the father. Indian nations do not want these personal matters investigated by state government.

Age and Marital Status

The bill would deny AFDC benefits to a child born out-of-wedlock to a woman who is less than 18 years old. In order to receive benefits for her child, a teenage mother would be required to marry either the man who the state determines is the biological father of the child, or an individual who would legally adopt the child. The bill would also give state governments the option to deny AFDC and Housing benefits to women who give birth before they are 21 years old. This rule would effectively give state governments the authority to tell young mothers, who need AFDC benefits, who they will marry. Indian governments, again, would have no role in the implementation of these rules.

Indian Child Welfare Act

The bills exempts adoptive and foster parents from all of the above restrictions, so that an "illegitimate" child who has been placed in foster care or with adoptive parents would be eligible to receive AFDC benefits. That is, the adoptive or foster family would be eligible to receive AFDC benefits on behalf of such children. Under the Indian Child Welfare Act (ICWA),

Indian nations are the entity with primary authority over child custody matters involving Indian children. As such, Indian nations would retain a certain degree of control over these matters. The proposed welfare reform bill could result in mothers, who are fit to retain custody of their children, placing them for adoption because the children would not be eligible to receive benefits. Indian control of these proceedings is necessary to reduce the potential negative social effect of these rules. A more troubling section of the bill would prohibit an agency or entity that received federal assistance and is involved in adoption or foster care placements from taking the race, color or national origin of a prospective parent into account in an adoption proceeding. The objective of this clause is to promote multiethnic placements. Regardless of the merit of such an objective for the non-Indian population, this legislation shall in no way interfere with the provisions of the Indian Child Welfare Act. Clear language is needed in the bill exempting any adoptive proceedings falling within the purview of ICWA.

Indian Inclusion in Grant Programs

States would receive grants to fund services and activities the state deems appropriate to discourage out-of-wedlock births and assure care for such children. Indian nations are not included in the definition of states, and there is no separate provision including Indian nations in these programs. It is the right and responsibility of Indian governments to develop any such programs directed at their members, and so Indian nations must be included in this grant program.

Indian Role in Job Creation, Training and Child Care

The Personal Responsibility Act would require welfare recipients to work, but provides

no mechanism for job creation, job training or child care. Furthermore, it does not provide Indian governments a role in this system, and it would eliminate or reduce the role that many Indian nations currently have in administering the JOBS program.

Alcohol and Substance Abuse as Disabilities

The Act would deny Supplemental Security Income (SSI) benefits to substance abusers and alcoholics. An individual whose primary diagnosis is addiction to alcohol or other drugs would no longer be considered disabled. As a result, substance abusers and alcoholics would lose both SSI benefits and Medicaid coverage, and possibly vocational and educational services provided by the states. Alcohol and other drugs have had a devastating effect on Indian country. Indian people unable to work because of their addiction to alcohol and other drugs must be supported in their efforts to recover until they are able to fully support themselves and their families. Alcoholism and substance abuse must continue to be recognized as disabilities under the law.

Child Support Enforcement

The Personal Responsibility Act includes several measures directed at the mothers of children born out-of-wedlock and children for whom paternity is not known, but contains no provisions relating to child support enforcement. It does not address the personal responsibility of biological fathers to pay child support to their children. Title V of The Family Responsibility Act, H.R. 11, would strengthen child enforcement mechanisms, but it does not address Indian issues in child support enforcement. Child support enforcement in Indian country raises many complex jurisdictional issues between state and Indian courts which have not been addressed at

the federal level. Furthermore, Indian nations currently receive no direct federal funding for child support enforcement. Both of these issues need to be addressed in any federal legislation dealing with child support enforcement. The acts, records and judicial proceedings of Indian courts must be given full faith and credit with respect to child support enforcement.

Social Services Block Grant

Senators McCain, Inouye, Baucus and others have introduced a bill, S. 285, that would make Title XX block grants available to Indian nations. During the 1980s, numerous federal welfare programs were consolidated into a single block grant. Indian nations were not included in this block grant program, and the effect has been that Indian nations have not received any of the funds distributed to states under the block grant. Senator McCain's bill gives the Secretary the authority to provide block grants to Indian nations, and to develop an appropriate funding formula. This funding would provide Indian nations with a new source of funding to partially offset major cuts in other social service and welfare funding.

Indian Specific Amendments to Welfare Reform

Indian governments provide a broad range of services to their members, including health, education and social services. Indian nations also administer their own court systems. In recognition of the unique sovereign status of Indian nations, many federal statutes provide for direct funding to Indian nations. Welfare reform legislation can, and should, be structured in such a way that Indian governments are able to be active participants in this national reform effort. We must ensure that the needs of Indian people are not overlooked in welfare reform legislation. Some of the programs proposed for block grants already provide for direct funding

to Indian nations, but would disappear under H.R. 4. Should the Senate proceed with the block grant approach, the following language, similar to that proposed by Representatives Miller, Richardson and Faleomavaega, should be adopted:

- Indian governments be funded directly in block grants in an amount equal to 5% of the total amount appropriated for each of Titles I, II, IV and V;
- the Secretary, in consultation with Indian governments, shall develop programs consistent with the goals of the state plan that adhere to Indian cultural, economic and social characteristics;
- that the United States, every state, every territory or possession of the United States, and every Indian nations shall give full faith and credit to the public acts, record and judicial proceedings of any Indian nation applicable to Indian child support proceedings to the same extent that such entities give full faith and credit to public acts, records and judicial proceedings of any other entity, and that any state-Indian or inter-Indian agreements concerning child support proceedings be recognized and accommodated; and
- any job training, education and job creation programs developed for or by the states shall also be available, or apply to, Indian nations.

Conclusion

Welfare reform legislation will impact Indian country in dramatic ways. We want to ensure that we are active and full participants in this process in recognition of our special sovereign status with the federal government. Thank you for the opportunity to provide written testimony on H.R. 4, The Personal Responsibility Act and the specific concerns of the Oneida Indian Nation before the Committee on Indian Affairs of the United States Senate. I will be happy to work with the members of this Committee as you consider this and other important welfare reform legislation.

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STATEMENT FOR SENATE COMMITTEE ON INDIAN AFFAIRS

SUBMITTED BY

THE NATIONAL CONGRESS OF AMERICAN INDIANS

REGARDING WELFARE REFORM AND BLOCK GRANTS

April 6, 1995

Introduction

The National Congress of American Indians (NCAI), is the oldest, largest, and most representative Indian advocacy organization in the nation with tribal membership of 182 Indian nations and communities. Of all proposals contained in the "Contract with America" and taken up by the 104th Congress, welfare reform will have the most significant and long-lasting consequences for the nation and for Indian tribes. As Congress is now debating various proposals to fundamentally restructure the manner in which welfare programs, social services, and related services are provided, NCAI submits this statement to lay out the probable consequences of these reform efforts and their impacts on Indian nations and Indian people. We are troubled by the current rush to reform the welfare system and reorganize government and the pace with which Congress is speeding ahead with legislation to implement proposals such as block grants to the states in areas concerning welfare, social services and related programs.

The putative purpose for Congress undertaking welfare reform efforts is to enhance and strengthen local government control in the administration of these programs. Indian tribal governments are "local governments" and are best suited to address local problems, while fully accounting for the many and unique local nuances in terms geography, demography, and economic variations. Unfortunately, up to now Indian tribal input has been sorely lacking in the welfare reform effort, and NCAI welcomes and appreciates the opportunity to begin our participation in this historical debate. In keeping with the Federal Indian policy of self-determination that had it's beginnings with the Nixon Administration and has been the hallmark of Federal-Indian policy for 25 years, we urge that any welfare effort

rest upon the foundation of the government-to-government relationship the tribes maintain with the United States. At bottom, if Indian tribes and their members are to benefit in the same fashion that residents of the several states benefit, any proposal to block grant Federal funds must include a direct Federal-tribal funding mechanism. Requiring tribes to work with and through the several states and the states' own non-bureaucracies would render the idea that authority should be delegated to the lowest practicable level moot when applied to tribes.

Welfare Reform and Block Grants

Of particular concern to tribes across the nation is the proposed "block granting" of Federal welfare programs, social services, and related services, and the precise funding and administrative mechanisms that may prevail if enacted, and the likelihood that Indian nations and people will continue to remain under served by these much-needed programs. We laud S.285, introduced by Chairman McCain early in the 104th Congress, to grant authority to provide social services block grants directly to Indian tribes and support this measure especially as it would provide a 3% tribal set-aside for grants and contracts entered into with tribes, tribal organizations, and/or tribal consortia to administer these critical programs. With the exception of the "Child Care Block Grant" in the House bill (H.R. 1214) which provides for the tribes to receive up to a 3% allocation, none of the other major funding proposals currently being considered as part of that legislation include tribal governments as eligible participants in a manner similar to the states. If tribal governments are not made eligible participants, and all the programs are block granted to the states, the effect will be to make the tribes and their service populations "clients" or "customers" of the states. This is problematic in two senses. First, the history of state provision of services to Indians leaves much to be desired in terms of equitable treatment and effective delivery of services. Second, it would be an undesirable and unacceptable undermining of the sovereign status of tribal governments and an abrogation of the special government-to-government relationship between the Federal government and the tribes. In particular areas such as education, health services, and others it would be an unlawful violation of the federal government's trust responsibility to Indian people. To avoid both the practical and legal negative consequences stemming from such an arrangement, tribal governments must be made eligible for direct funding of block grants.

Furthermore, in establishing criteria for the grants, consideration should be given and allowances made for the unique status of and special needs of tribes. The following minimum factors must be included in legislation implementing any block grant system:

1) Tribal governments must be eligible for direct funding or block grants in every category for which states are eligible and programs must be funded at a level adequate to insure the provision of services at a level and of a quality at least comparable to the services provided by the states. There should be a minimum tribal allocation of 3%-5% in each program.

2) Formulas for distribution of funds to tribes and program guidelines should be developed in consultation with the tribes so as to take into account unique tribal economic, cultural, and other conditions. Consideration should be given to such additional factors as are determined appropriate to insure optimum delivery of services, including unique geographic and demographic conditions of the reservations and service areas.

3) Funds not distributed during a fiscal year should be made available for reallocation in subsequent years.

4) Special provisions should be made for grants to tribal and intertribal organizations serving more than one tribe where this is found to be more desirable, practical and efficient and the impacted tribes desire to work in such a consortium or cooperative.

5) Eligibility for or receipt of tribally or Federally administered services, for example the Indian Health Services, should not exclude individuals from eligibility for state administered services where tribal or Federal services are unavailable or inadequate.

6) Where practical or necessary, state and tribal programs and program planning should be coordinated.

7) There should be an option for tribes who do not want or who are not able to administer these programs to enter into cooperative agreements with states or others for the administration of the programs.

8) Tribes should have the flexibility to access the block grants if they have the necessary capacity and wish to access others in the future.

9) Planning funds and technical assistance should be available to the tribes for planning and development of programs, and the funding and technical expertise to build and improve tribal administrative capacity to administer these programs. If there are to be limitations on the use of funds for administrative purposes as applied to tribes, any such constraints must take into allow for limited tribal resources.

10) Tribes must have the same flexibility as the states to move funds from one block grant to another as well, as the ability to reallocate such funds to other programs serving similar needs but funded from other sources.

Employment Training and Employment Availability

To be successful in the long run, efforts to reform the welfare system must reduce dependency and arm those people now receiving assistance with the necessary skills to enter the labor force. Job and skills training programs, such as the "Job Opportunities and Basic Skills" program (JOBS) are invaluable in providing welfare recipients with the wherewithal to get and retain employment. These programs, however, presuppose that there are in fact job opportunities available. Unfortunately for much of Indian America these opportunities are sorely lacking. Unemployment rates in Indian country average 50%. The JOBS program has been successful in weaning welfare recipients from Federal assistance and has resulted in over 2,000 private job placements in FY1993 alone. These programs should be encouraged, not curtailed, if welfare dependency is to be reduced in Indian country.

The rationale set forth by congressional proponents for overhauling the nation's welfare system is that it is not working as well or as efficiently as it should be. Consistent with the philosophy behind these efforts, tribal governments should be afforded the same opportunity as the states to receive Federal funds and administer welfare and social services programs to their own members. Proposals to re-work the system can be effective in Indian country but must have as their aim reducing the reliance on the very system we are reforming. Perhaps more importantly from the tribal perspective these efforts, and any resultant enactment, must remain in accord with and serve to strengthen tribal sovereignty and the unique Federal-Indian relationship.

* * *

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EXECUTIVE DIRECTOR
Choctaw

Resolution # 95-DC-EX-009

TITLE: SUPPORT FOR FEDERAL BLOCK GRANTS

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution, and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns, and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI, and

WHEREAS, tribal governments pre-date state governments as established sovereign nations responsible for providing all governmental services and support for their peoples, and

WHEREAS, tribal governments, as sovereign nations, possess a sovereign status superior to state governments, and

WHEREAS, the NCAI does oppose any federal funding proposal or block grant proposal that does not include tribal governments as eligible recipients/participants or which would have the effect of making the tribes or their direct service populations "clients or customers" of the states

THEREFORE BE IT RESOLVED, that the National Congress of American Indians does hereby demand the U.S. government, in recognition of the government-to-government relationship between the United States and Indian Tribes, to award and distribute federal block grant dollars designated to serve Indian populations directly to the tribes and not channeled through the states

BE IT FURTHER RESOLVED, that the National Congress of American Indians demands that tribal governments be made eligible for direct funding or block grants in every category for which states are eligible on a status equal to and no less than that of the states

CERTIFICATION

The foregoing resolution was adopted at the 1995 Executive Council Winter Session of the National Congress of American Indians, held at the Hyatt Regency on Capitol Hill in Washington, D.C. on February 13-14, 1995 with a quorum present

.....
[illegible], President

ATTEST:

.....
S. Diane Kelley, Recording Secretary

Adopted by the General Assembly during the 1995 Executive Council Winter Session held at the Hyatt Regency on Capitol Hill in Washington, D.C., February 13-14, 1995

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EXECUTIVE DIRECTOR
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Mandan, Hidatsa

Resolution # 95-DC-EX-010

TITLE: OPPOSITION TO SPECIFIC WELFARE REFORM ISSUES

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns, and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, the Republican leadership in its "Contract with America" proposed to "reform" welfare legislation, and

WHEREAS, Congress has begun the debate on this legislation; and

WHEREAS, on many reservations jobs are not available, therefore requiring Indian families to rely on welfare; and

WHEREAS, the seasonal nature of many jobs on some reservations requires Indian families to rely on welfare during parts of the year; and

WHEREAS, low education levels, discrimination, and health conditions may require many Indian families to rely on welfare for their survival, and

WHEREAS, changes in welfare legislation may have an enormous impact on Indian people, and particularly children, who are the largest numbers of those who must depend on welfare, and

WHEREAS, the United States Government, through treaties, Executive Orders, legislation, regulation and policies, has recognized the sovereignty of American Indian tribal governments and has dealt with tribal governments on a government-to-government basis, and

WHEREAS, tribal governments have a responsibility for the welfare of their members and must be considered in any welfare reform legislation which impacts tribal communities, and

WHEREAS, Indian tribes have unique cultural traditions and mores which do not necessarily reflect those of the non-Indian majority population, and

WHEREAS, tribal governments support the idea of "local control" being advocated by the current majority of Congress, and

WHEREAS, believing in local control, Indian tribes firmly believe it is tribal governments who can, with adequate resources, best determine how welfare programs should operate in their communities, now

THEREFORE BE IT RESOLVED, that the National Congress of American Indians is firmly opposed to any welfare reform legislation that does not address the specific needs of Indian reservations and communities, and

BE IT FURTHER RESOLVED, that NCAI is adamantly opposed to any welfare reform legislation which does not recognize

1. the sovereign status of tribal governments to determine the welfare needs of their individual communities,
2. the cultural differences that exist between Indian communities and the majority of non-Indian communities,
3. that by forcing rules and regulations on tribal communities which are not reflective of tribal community values, and which place welfare programs entirely in the hands of state governments, tribal governments are not given the authority and resources necessary to exercise tribal control over welfare programs in Indian communities

CERTIFICATION

The foregoing resolution was adopted at the 1995 Executive Council Winter Session of the National Congress of American Indians, held at the Hyatt Regency on Capitol Hill in Washington, D C , on February 13-14, 1995 with a quorum present

gaiashkibos, President

ATTEST:

S Diane Kelley, Recording Secretary

Adopted by the General Assembly during the 1995 Executive Council Winter Session held at the Hyatt Regency on Capitol Hill in Washington, D C , February 13-14, 1995

STATEMENT

OF

George F. Grob

DEPUTY INSPECTOR GENERAL FOR
EVALUATION AND INSPECTIONS
OFFICE OF INSPECTOR GENERAL
DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

CHILD WELFARE SERVICES AND PROTECTIONS FOR
NATIVE AMERICAN CHILDREN

April 5, 1995

INTRODUCTION

Good afternoon, Mr. Chairman and members of the committee. I am George Grob, Deputy Inspector General for Evaluation and Inspections in the Department of Health and Human Services (HHS). You have asked us to testify today on our recent study of child welfare services and protections for Native American children. We are pleased to support the deliberations of the committee with our testimony.

Based on our studies, I believe that the welfare of Native American children in substitute care may be adversely affected by the complexity of current Federal programs. This programmatic complexity, however, reflects the underlying complexity in inter-governmental relations and is compounded by frustrations stemming from economies of scale. More importantly, the complexity of the current programs mirrors the complexity of child welfare problems and the sophisticated solutions we have all come to expect.

I will illustrate all of these complexities and their negative consequences for child welfare services for Native American children. I will also discuss options for addressing this complexity. Before I begin, however, I would like to provide you with some background information about the Inspector General's office and about child welfare services for Native American children.

OVERVIEW OF THE OFFICE OF INSPECTOR GENERAL IN HHS

The Office of Inspector General is responsible for protecting the integrity of Departmental programs, as well as for promoting their economy, efficiency, and effectiveness. The OIG meets this challenge through a comprehensive program of audits, program evaluations, and investigations designed to improve the management of the Department and protect its programs and beneficiaries from fraud, waste, and abuse.

Within the Department, the OIG is an independent organization, reporting to the Secretary and communicating directly with the Congress on significant matters. We carry out our mission through a field structure of 8 regions, 65 field offices, and a staff of over 1,200 auditors, evaluators, and investigators.

CHILD WELFARE SERVICES AND PROTECTIONS FOR NATIVE AMERICAN CHILDREN: BACKGROUND

We have conducted a study of child welfare services and protections for American Indian and Alaska Native children, whom I will refer to collectively as Native American children. The report for this inspection, which is entitled "Opportunities for ACF to Improve Child Welfare Services and Protections for Native American Children," has been submitted for the hearing record and has been distributed to the committee members for their consideration. Additional copies of the report, and all other OIG reports, are available through our office.

Over-Representation of Native American in Substitute Care: There are no comprehensive current data available on the number of Native American children in substitute care. The most recent data available, however, demonstrate that Native American children are significantly over-represented in substitute care. As my first figure illustrates (see attachment 1 to this document), in 1986, Native American children represented .9 percent of the total U.S. population of 63.8 million children, but 3.1 percent of the 287,000 children in substitute care. At that time, there were about 9000 Native American children in substitute care. About 16 of every 1,000 Native American children were in substitute care. By comparison, at that time, about 5 of every 1,000 children in the general population were in substitute care.

Federal Funding and Oversight: Federal responsibility for funding child welfare services and ensuring child welfare protections for Native American children rests with the Bureau of Indian Affairs (BIA) in the Department of the Interior, and the Administration for Children and Families (ACF) in HHS.

The Role of the Bureau of Indian Affairs: The BIA serves as the focal point for Federal programs for American Indians and Alaska Natives.[1] Within BIA, the Division of Social Services administers a broad range of programs, including child welfare services, for Tribal members. The BIA provides child welfare services funding to Tribal governments or those who care for Tribal children under three laws: The Indian Child Welfare Act (ICWA) (P.L. 95-608); the Snyder Act [ch. 115, 42 Stat. 208 (1921)]; and the Indian Self Determination Act (P.L. 93-638). The BIA

does not fund States to provide child welfare services for Tribal children.

Through ICWA, BIA provides grants for Tribal child welfare programs.[1] In fiscal year 1993, BIA distributed about $9.7 million in ICWA grants to 375 Tribes.[2]

In addition to providing funding, ICWA stipulates child welfare protections for Tribal children in State custody. The law establishes Federal standards for removing these children from their families and placing them in foster or adoptive homes that reflect the unique values of Tribal culture.

Under the Snyder Act, BIA provides child welfare assistance payments as additional support for child welfare services for Tribal children.[3] These payments are made, however, only when Tribes are unable to obtain funds from other sources. In 1993, BIA distributed a total of about $20 million in child welfare assistance payments to support an average monthly caseload of 3020 children.[4]

The Indian Self-Determination Act (P.L. 93-638) provides legal authority under which some Tribes have contracted with BIA to administer their own child welfare services with funds that BIA would have expended on the administration of those services.[5] According to the most recent data available, 154 Tribes received about $60.2 million in 1992 to administer their own social services.[6] Some of these monies supported child welfare services, but the exact amount is unknown.

The Role of the Administration for Children and Families. The ACF directs, funds, and oversees programs for vulnerable children and families in the United States. Within ACF, the Children's Bureau supports State and Tribal programs to provide child welfare, foster care, adoption, and family preservation and support services.[7] These programs are funded under three titles of the Social Security Act: Titles IV-E, XX and IV-B. The ACF awards funds under these three Titles to support State child welfare services for all children, including Native American children, in State custody.[8] States may share these monies with Tribal child welfare agencies.[9] The ACF also awards Title IV-B funds directly to some Tribes.

In addition to funding child welfare services, ACF monitors States and some Tribes to ensure their compliance with the Adoption Assistance and Child Welfare Act (P.L. 96-272), which specifies standards for agency planning and internal control systems, and the timely provision of certain child welfare services and protections to all children in public custody.

Concerns About Services and Protections for These Children: Many child welfare experts and Federal, State, and Tribal child welfare administrators have raised concerns about serious gaps in the provision of child welfare services and protections to Native American children. Major concerns include the inconsistent provision of some federally mandated child welfare protections by States, and the limited capacity of some Tribes to provide child welfare services--attributable, in part, to difficulties in obtaining available Federal funds that could be used to strengthen Tribal programs.

Rationale for the OIG Study: We conducted our study in response to ACF's interest in improving child welfare services and protections for Native American children. We worked with ACF, BIA, and staff from this Committee to design the study.

Methodology: our report is based on data gathered from four primary sources: a mail survey of State child welfare agencies in those 24 States with the largest Native American populations; a review of data on ACF funding to Tribes and States; a review of relevant Federal legislation, regulations, and policy; and interviews and discussion groups with child welfare experts and administrators in ACF, BIA, State and Tribal child welfare agencies, and Native American child welfare organizations.

OUR REPORT

Our research reveals that the welfare of Native American children in substitute care may be adversely affected by the complexity of current Federal programs. In the following discussion, I concentrate on a presentation of the complexities in funding mechanisms for Tribal child welfare services. Later, I will describe options for facilitating Tribes' access to funding. For more information on these subjects, and for information about Federal oversight of child welfare protections for Native American Children, I refer you to our report.

Complexities in HHS Funding Mechanisms for Tribal Child Welfare Services

As my first table illustrates (see attachment 2 to this document), most Tribes have received little or no HHS funding through States for child welfare services. In addition, most Tribes have received little or no funding directly from HHS. My second figure (see attachment 3 to this document) explains why this is so. As you examine the complex funding structure for Tribal child welfare services that is illustrated in Figure 2, consider that, for each of the three HHS funding streams for Tribal child welfare services, there are different eligibility criteria, reporting requirements, and funding mechanisms.

I trust that all in this room will understand the funding description, but many people find the programs confusing. As you are listening, you might want to imagine the potential difficulties for a Tribal child welfare administrator with no formal training in grant writing or grants administration and a very small, underpaid staff. You might want to think of the challenge that he or she faces in trying to piece together funding for the Tribal program from these sources while also trying to meet the requirements and make the applications for funding from other sources.

Most tribes have received little or no Title IV-E or Title XX funding. In 15 of the 24 States with the largest Native American populations, eligible Tribes received neither Title IV-E nor Title XX funds from 1989 to 1993.[9] In 1993 alone, these 15 States received $1,714 million in Title IV-E funds and $1,289 million in Title XX funds.

Nine of the 24 States reported that some Tribes in their States received Title IV-E and/or Title XX funds in 1993. Eight States reported that 46 Tribes received $1.9 million--2.3 percent--of the States' $82 million Title IV-E funds, while 4 States reported that 32 Tribes received $2.8 million--2.9 percent--of the States' $98 million Title XX funds.

Between 1989 and 1993, the number of States that shared these funds with Tribes, the number of Tribes receiving the funds, and the amount of money they received, as a percentage of the States' aggregate funding, increased very little.[10]

To put the amount of money that the States shared with Tribes in some perspective, one might consider that, although Indians comprise 1.1 percent of the total population in the four States that shared Title XX funds, Tribes received 2.9 percent of these funds. Similarly, Indians comprise 3.3 percent of the population in the eight States that shared with them 2.3 percent of the Title IV-E funding. Nation-wide, Native American comprise at least 0.40 percent of the population (and as much as 0.79 percent of the population, according to the Bureau of the Census), and yet they receive between 0.07 and 0.1 percent of Title XX and Title IV-E funds. This apparent inequity in funding is compounded when one considers that Native American children are approximately three-and-a-half times as likely as children in the general population to be in substitute care.

We have identified a few key factors that constrain Tribes' access to the States' Title XX and Title IV-E funds. These are summarized below.

- The Congress provided no authority for ACF to award Title IV-E and Title XX funds directly to Tribes; and legislation neither requires nor encourages States to share funds with Tribes.

The ACF requires that formal Title IV-E funding agreements be achieved before States transfer Title IV-E monies to Tribes. These funding agreements define the responsibility of the Tribes to meet the requirements of P.L. 96-272 and they outline the conditions under which States will transfer funds. States and Tribes are allowed greater flexibility in making arrangements for the transfer of Title XX funds. Such arrangements may include contracts, grants, or other State-approved mechanisms for the transfer of funds and the provision of social services.

- Efforts to develop Tribal-State Title IV-E funding agreements and Title XX funding arrangements are constrained by several factors.

Disputes between Tribes and States about issues unrelated to child welfare: In many cases, to arrive at Title IV-E funding agreements and Title XX funding arrangements, the two governments must circumnavigate longstanding points of contention about such issues as land and jurisdiction. Several of the child welfare administrators and experts with whom we spoke indicated that a fundamental lack of trust between State and Tribal representatives contributed to the incidence of protracted and/or failed negotiations. One State child welfare administrator reported that disagreements over land rights and jurisdiction had prevented his State from reaching an agreement with a Tribe. An Indian child welfare expert reported that Tribal sovereignty became a key issue in negotiations between another State and a Tribe when the State suggested that the funding agreement would be contingent upon the Tribal adoption of the complete set of State child welfare policies and procedures.

State responsibility for Tribal compliance with the requirements of P.L. 96-272 for Title IV-E funds: Some States are reluctant to form Title IV-E agreements with Tribes because, according to law, the States are then accountable for Tribal compliance with the requirements of Title IV-E and, in some instances, Title IV-B. Thus, States can lose both Title IV-E and section 427 incentive funds if Tribal records are out of compliance.[7] Officials that we interviewed from two States volunteered that ACF had disallowed Title IV-E payments that the States had transferred to Tribes.

The matching share requirement for Title IV-E funding: Officials from States that have Title IV-E agreements with Tribes told us that their States assume responsibility for the Tribal portion of the Title IV-E matching share. Other States, however, may be less willing or able to do so, and most of the State and Tribal child welfare administrators with whom we spoke agreed that many Tribes would have difficulty fulfilling the matching share requirement.

Tribal land that extends into multiple States: In cases in which Tribal land extends across State borders, Tribes must negotiate Title IV-E funding agreements and Title XX funding arrangements with each of the

States involved. For example, the reservation of the Navajo nation, one of the largest Tribes in this country, extends into Arizona, New Mexico, and Utah. To obtain all of the Title IV-E and Title XX funds for which it might qualify, this Tribe would have to conclude six separate negotiations with the three States. To date, the Navajo have received no Title IV-E funding at all; they have received Title XX funds from Arizona and New Mexico. At least eight federally recognized Tribes have land that extends into multiple States.[7]

Most Tribes have received little or no Title IV-B funding. In fiscal year 1993, 471 of the 542 federally recognized Tribes received no Title IV-B child welfare funds from ACF. Of the 59 that did receive base child welfare funding, only 21 were eligible to receive incentive funds. In all, the 59 Tribes received about $762,000--0.3 percent--of the nearly $295 million Title IV-B child welfare funds awarded. This is a slight increase in funding from 1989, when 29 Tribes received about $461,000--0.2 percent--of the nearly $246.7 million in Title IV-B funds.

Several Federal requirements constrain the Tribes' access to Title IV-B funds.

- The eligibility criteria for Title IV-B child welfare funds effectively exclude many Tribes.
- The Title IV-B award formulas result in few Tribes receiving Title IV-B funds and in relatively small grants for those Tribes that do receive funds.
- The application, review, and compliance requirements discourage Tribes from seeking the funds.

OPPORTUNITIES FOR ACF TO IMPROVE CHILD WELFARE SERVICES FOR NATIVE AMERICAN CHILDREN

There is no quick and easy fix for the complicated funding structure that limits Tribes' access to child welfare funding. Making constructive change in this area requires sensitivity to the complex relationships among Tribes and States and various Federal agencies. Accordingly, we have developed

a range of options, beginning with those that could be implemented in the near term with minimal investment of staff or program resources, and within existing legal authorities. We follow with other options that could be pursued over the longer term; these entail more fundamental changes in practices and relationships, changes in existing legal authorities, and/or larger investments of administrative or program resources.

Any changes that could affect child welfare services or protections for Native American children should be pursued by ACF and BIA, working closely together, perhaps through the memorandum of agreement mechanism allowed by the Indian Child Welfare Act. Tribal and State government representatives should also be involved in any deliberations about changes to child welfare programs for Native American children.

Facilitating Tribes' Access to ACF Funds

The Tribes' access to each of ACF's three major child welfare funding streams could be facilitated. Because Title XX and Title IV-E funds have flowed from ACF to Tribes indirectly through the States, we consider them separately from Title IV-B funds that ACF awards directly to Tribes.

Title XX and Title IV-E funds

Option: Effective Practices. The ACF could identify best practices and lessons learned from those States and Tribes that have successfully negotiated Title IV-E funding agreements and Title XX funding arrangements. This information could be disseminated widely to both States and Tribes and ACF could provide technical assistance as appropriate. This option would require minimal resources to implement and could provide potentially valuable insights to States and Tribes, which often struggle with the process. In pursuing this option, ACF could build on its experiences with the few research and demonstration projects it has funded to support the development of Tribal-State agreements.[11] The ACF could also assess the feasibility of developing a model funding agreement to provide guidance on Federal standards and expectations. Pursuing this option, however, would not address the more intractable barriers to the formation of these funding agreements/arrangements that result from Federal legal requirements.

Option: State Reporting. The ACF does not now routinely receive information from States on the needs of Tribes, the nature of Tribal service programs, or the extent to which States share either Title XX or Title IV-E funds with Tribes. Fuller reporting would provide ACF with better information about the circumstances of those Tribes with which it has no other contact, and could serve as an incentive for States to share more Title XX and Title IV-E funds. This reporting might require legislation, but could be incorporated into the joint-planning process that ACF conducts with States for Title IV-B child welfare funds. A potential drawback to this approach is that it might increase the administrative burden on the States.

Option: Legal Barriers to Agreements. Some Federal requirements have impeded the development of Tribal-State agreements. These include requirements that (1) States assume financial risk for Tribes' use of Title IV-E funds; (2) a matching share be contributed for Tribe's Title IV-E funds; and (3) Tribes negotiate with multiple States for Title XX and/or Title IV-E funds when their land extends across State borders. Changing these requirements would require legislation, but could alleviate some of the more fundamental barriers to the flow of funds from States to Tribes.

In eliminating the financial risk to States for the Tribes' use of IV-E monies, ACF would remove a major disincentive for States. The ACF could still ensure appropriate management of the funds by holding the Tribes themselves accountable for their performance, as it does in other programs. Allowing relief from the Title IV-E matching-share requirement would reduce the financial burden on States and would allow those Tribes with limited resources to receive funds with little or no match. Such a reduction or elimination of matching share requirements for Tribal funding has been implemented in other ACF programs. Finally, designating a lead State for negotiations and the transfer of funds is one possible approach to simplifying the process for those Tribes with land that extends across State borders.

Option: Direct Grants. New legislation could provide for direct Title XX and/or Title IV-E funding to Tribes. This option would be the surest route to facilitating the Tribes' access to these two important funding streams. It would, however, entail fundamental changes in relationships, processes, and resources.

The precedent for ACF to fund Tribes directly already exists. The agency deals with Tribes directly in funding, for example, the Title IV-B Child Welfare and Family Preservation and Support grants, the JOBS program, and the Child Care and Development block grants.[18] Many Tribal officials told us they would welcome this approach. It would facilitate their access to the funds, and would be more consistent with Tribal sovereignty.[19] With this direct approach, ACF could ensure that Tribal grantees have the capacity to provide quality services and are properly accountable for the Federal funds.

On March 24, 1994 a bill (H.R. 4162) that would mandate a three-percent set aside of Title XX monies for Tribes was introduced in the House. On January 26, 1995, a similar bill (S. 285) was introduced in the Senate. Direct Title XX grants to Tribes might be opposed by States because they would be drawn from the States' allotments, but such grants would certainly facilitate funding to the Tribes.

With respect to Title IV-E funding, most State officials with whom we talked favored ACF dealing directly with Tribes. This direct approach for Title IV-E would eliminate the need for Tribal-State agreements and, because Title IV-E is an uncapped Federal entitlement, would not affect the monies available to the States.

This direct approach for Title IV-E would, however, increase Federal outlays as more Tribes seek reimbursement. It would also heighten demands on ACF to strengthen its own expertise, to provide more technical assistance to Tribes, and to manage an administrative process for more grantees.[20] Given the heavy demands on its administrative resources, ACF could alleviate this burden somewhat by such strategies as contracting for technical assistance to Tribes, as it is now considering, and integrating its monitoring efforts with those of its other programs. The ACF could also examine the feasibility of using a nongovernment organization for reviews of plans and applications, for grants administration, or for monitoring, as well as for technical assistance. In so doing, ACF could retain important authorities such as those for setting policy and priorities, for approving Federal expenditures, and for hearing appeals.[21]

Title IV-B funds

Title IV-B funds are important to Tribes. Even though they have been the smallest source of Federal funds for child welfare services, they can support a wide range of programs. They are also the one funding source for Tribes over which ACF has direct control. As noted earlier, ACF has recently taken some steps, such as simplifying requirements for the IV-B child welfare plans, to facilitate the Tribes' access to these funds. In continuing these efforts, ACF could pursue the following:

Option: Technical Assistance. The ACF could strengthen technical assistance to those Tribes that are eligible for and interested in Title IV-B child welfare and/or family support and preservation funds. The ACF regional office staff could provide intensified support to these Tribes with conference calls and periodic meetings that address specific concerns raised by the Tribes and the various components of the Title IV-B funding requirements. This option would benefit those Tribes with fewer staff, lesser grant-writing expertise, and lesser programmatic knowledge. In addition, it could be implemented without a major investment of time and without additional legal authority.

Option: Eligibility. Some of the requirements that limit the number of Tribes that qualify for or Title IV-B funds could be eliminated. These include requirements that Tribes must (1) have contracted with BIA for child welfare services in order to qualify for Title IV-B Subpart 1 child welfare base funding, (2) be located in States meeting the Section 427 protection requirements before they are eligible for Title IV-B Subpart 1 child welfare incentive funding; and (3) qualify for a Title IV-B Subpart 2 fiscal year 1995 allotment of at least $10,000 to receive any family preservation and support services monies.

Some of these changes would require regulatory amendments and others require new legislation. Broadening eligibility for Title IV-B base and incentive funding could heighten financial pressures on the States; more Tribes may well be funded and the States' allotments would be reduced accordingly. Changing the requirement for family preservation funds, on the other hand, would have no financial impact on the States because Tribal grants are limited to one percent of the annual appropriation. This change would, however, likely reduce grant amounts for those Tribes that now qualify for funding.

The ACF is considering a proposal to eliminate the BIA contract requirement. Further experience with grant awards under the new family preservation legislation could help inform ACF's decision about revising this eligibility requirement.

Option: Funding streams. It might also be possible to further streamline requirements for plans, applications, and reporting; and to consolidate funding streams for ACF's child welfare and related programs, and for those of other Federal agencies, especially BIA. Further simplifying requirements and consolidating funding streams would significantly reduce the burden facing many Tribes that must piece together support from several funding sources, each with its own requirements and often with its own program staff.

The ACF has begun to simplify the planning requirements for Title IV-B programs. It could take additional steps to develop strategies for simplifying the application and reporting processes. It could support pilot projects with a few Tribes to "decategorize" the Title IV-B funding streams, or those along with other related funding. Iowa's decategorization initiative for child welfare services might serve as a model for such an effort.[22] The ACF could also pursue the consolidation of funding streams through the efforts of the Intra-Departmental Council on Native American Affairs, which was recently reestablished with a revised charter.

Another mechanism for simplification of funding for Tribal child welfare might be provided by the already existing authority for the Secretaries of DOI and DHHS to support about 30 Tribal self-governance projects, in which the funding for several Federal programs is consolidated.[23] Broader legislative authorities to consolidate funding streams for Tribes might also be pursued. The DHHS, together with the Departments of Education, Interior, and Labor, currently have authority, for example, to integrate their funding for Tribes' employment, training, and related services.[24] This authority might serve as a useful model for legislation allowing consolidation of the child welfare funding streams.

Many Federal, State, and Tribal child welfare administrators with whom we spoke advocated for the simplification and consolidation of grant programs.[25] This course of action, offers, in their opinion, significant

potential for achieving real improvement in the Federal government's approach to funding the Tribes' child welfare programs. Other lesser steps, they suggest, will address the problems only at the margin.

NEW LEGISLATION AND CHANGES TO REGULATION

Following the release of the OIG report, Congress enacted legislation (P.L. 103-432) that requires States to address compliance with ICWA as part of their Title IV-B plans.

In addition, ACF has published a notice of proposed rulemaking to release Tribes from the requirement of having Section 638 contracts with BIA as a qualification for Title IV-B funding. This notice of proposed rulemaking also increases the amount of IV-B funds available to Tribes. The agency has received comments from Tribes and States and is in the process of publishing a final rule that addresses both of these issues.

Most recently, this committee has introduced a bill (S. 285) to amend Title XX to allow for a set-aside for Tribes.

ESTABLISHMENT OF INTERAGENCY WORKGROUPS

On September 28, 1994, ACF hosted a meeting of the most senior administrators in the BIA, the Indian Health Service, the Administration for Native Americans, and the ACF Children's Bureau. This group established two interagency working groups: one to improve funding for child welfare services for Native American children and another to improve Federal oversight of child welfare protections for the children.

CONCLUSION

Thank you for the opportunity to appear before you today. I look forward to a cooperative relationship with the your committee as the congressional session continues.

This completes my written statement. I am happy to respond to any questions that you might have.

NOTES

1. The BIA programs only serve members of Tribes that the Bureau has formally acknowledged or recognized. This Federal recognition may be the result of a treaty, statute, executive or administrative order, or history of dealings between the Federal government and a Tribe.

   In order to achieve Federal acknowledgement or recognition, a Tribe that petitions the DOI must have governmental authority over its members and occupy a specified territory or community viewed as distinctly Indian. Other criteria for Federal acknowledgement include evidence that the tribe has been identified as an American Indian entity since 1900 and that tribal members are descendants of an historical Indian tribe or tribes that functioned as a single autonomous political entity [25 CFR 83.7 (1994)].

2. The ICWA grant monies can be used by tribes to meet the matching share requirements of other Federal funding programs.

   Beginning in FY 1994, ICWA funds will be included with social services administration funding and other human services funding in the Tribal Priority Allocations for Tribes' base human services funding. Accordingly, ICWA funds are no longer designated exclusively for child welfare services. The ICWA monies can be reprogrammed by the Tribes to support other Tribal Priority Allocation programs, such as those for tribal government, general administration, resources management, public safety and justice, and education.

3. According to BIA data, the FY 1993 ICWA allocation was originally set at about $18.09 million. About $8.4 million in ICWA funds were re-programmed, however, to cover a shortfall in BIA education funding.

   Through FY 1991, BIA distributed its ICWA funds according to a competitive process. In January 1994, BIA issued revised ICWA regulations, however, and the agency will now make funds available to all Tribes according to a grant formula.

   Below are listed, for fiscal years 1989 through 1994, approximate ICWA funding amounts and the number of Tribes funded.

   1989: $11.2 million 98 Tribes

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1990: $7.1 million	124 tribes
1991: $7.0 million	113 tribes
1992: $14.2 million	374 tribes
1993: $9.7 million	375 tribes
1994: $22.9 million	534 tribes

In 1994, ICWA grant awards to individual Tribes ranged in value from $29,446 to $750,000.

4. Below are listed, for fiscal years 1991 1992, and 1993, BIA estimates of the child welfare assistance payments made and the average monthly caseload of Tribal children for whom services were provided with these funds.

1991:	$17.5 million	2,920 children
1992:	$18 million	3,020 children
1993:	$20 million	3,020 children

5. The BIA provides services for Tribes when these services are not provided by another entity. Through contracts and grants established under P.L. 93-638, Tribes can, instead, provide for themselves the services that BIA would have provided for them.

When a social services contract is established, BIA transfers to the Tribe the monies it would have spent in the operation of the social services program, additional monies for indirect costs such as rent and telephone use, and the welfare assistance payments that the BIA would have distributed for the care of Tribal members.

The BIA also awards monies through discretionary, competitive, one-time P.L. 93-638 grants, which support Tribes in their efforts to become prepared to administer P.L. 93-638 contracts. The grants are also awarded to support Tribes in improving their administration of services for which a contract has already been established. The P.L. 93-638 grant monies can be used to meet the matching share requirements of other Federal funding programs, but the contract monies cannot be. According to BIA records, in FY 1994, a total of $4.2 million in Self-Determination discretionary grants was awarded to approximately 70 Tribes.

6. According to BIA, of the approximately $60.2 million that Tribes received, approximately $27.2 million was for Tribal social services staffing, and $33 million for contract support (or indirect administrative costs) related to the administration of the Tribal social services programs. In 1993, Tribes received a total of approximately $60 million, of which $28 million was for Tribal social services staffing and $32 million was for

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contract support. Funding for social services staffing comes from the BIA Social Services budget, while funds for contract support come from a separate budget.

7. The ACF National Center on Child Abuse and Neglect (NCCAN) provides additional funding to States for child protection and treatment programs under the Child Abuse Prevention and Treatment Act (P.L. 93-247, as amended). This funding includes Basic State grants (part I), Disabled Infants grants (part II), State Community-Based Child Prevention grants, and Children's Justice Act grants. In addition, NCCAN provides Emergency Services funding to States, and discretionary grants to both States and Tribes.

   In FY 1993, $17 million was appropriated for part I grants, $3 million was appropriated for part II grants, $5.3 million was appropriated for State Community-Based Prevention, and $9.2 million was appropriated for Children's Justice Act grants. In addition, $19 million was appropriated for emergency services and $16 million was appropriated for discretionary grants.

8. The Adoption Assistance and Child Welfare Act defines "child welfare services" as "public social services which are directed toward the accomplishment of the following purposes: (A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the families; (E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption." [P.L. 96-272, sec. 425, 94 Stat. 519, (1980)]

9. Some States voluntarily provide their own funding for Tribal child welfare services.

   Other States provide some child welfare services for Tribal children because they have a legal responsibility to do so. In 1953, Public Law 280 allowed States to assume extensive criminal and civil jurisdiction over Indian lands. Tied to this jurisdiction is the

responsibility to provide a variety of services for Indians on these lands.

Fifteen States have assumed some P.L. 280 jurisdiction over some Indian lands: Alaska, Arizona, California, Florida, Iowa, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, Utah, Washington, and Wisconsin. As part of their legal responsibilities tied to P.L. 280, some of these States provide services, including child welfare services, for some Indians.

10. While Tribal organizations may not have received any Title IV-E or Title XX funds from States to provide their own services, Tribal members are generally eligible for State services and may have received services provided by the State with Title IV-E and/or Title XX funds.

To be eligible for Title XX funds, Tribal organizations must administer social services programs and be prepared to make arrangements with the States in which they are located to receive funds and provide social services to members of the Tribes. Such arrangements can take the form of contracts, grants, or other State-approved funding mechanisms.

To be eligible for Title IV-E funds, Tribal organizations must administer child welfare programs that meet the standards specified by P.L. 96-272 and must be prepared to make formal Title IV-E funding agreements (as required by ACF) with the States in which they are located.

11. The number of States that shared Title IV-E funds with Tribes increased from five in 1989 to eight in 1993; the number of States that shared Title XX funds increased from three to four over this same period.

The amount of funding that Tribes received, as a percentage of the States' aggregate funding, also increased. The amount of Title IV-E funding that Tribes received increased from about 1.7 percent of the 5 States' aggregate funding in 1989 to about 2.3 percent of the 8 States' aggregate funding in 1993. The amount of Title XX funding that Tribes received increased, from about 1.2 percent of the 3 States' aggregate funding in 1989 to about 2.9 percent of the 4 States' aggregate funding in 1993.

The proportion of eligible Tribes receiving Title IV-E and Title XX funds also increased. In 1989, 5 States reported that 30 (32 percent) of the 95 eligible Tribes in the States received Title IV-E funds. In 1993, 8 States reported that 46 (45 percent) of the 102 eligible Tribes

in the States received these funds. In 1989, 3 States reported that 24 (47 percent) of the 51 eligible Tribes in the States received Title XX funds. In 1991, 4 States reported that 32 (51 percent) of the 61 eligible Tribes in the States received these funds.

12. The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) barred ACF from issuing disallowances as a result of Section 427 and Title IV-E reviews until October 1, 1994. The ACF is now reevaluating its Section 427 review process and its other oversight mechanisms for State child welfare programs. Until recently, the ACF review process operated as follows:

    When a State passed through Title IV-E monies from ACF for the care of a child who was in Tribal custody, then payments made for that child's care entered the pool from which a sample was drawn for the ACF review of State Title IV-E payments. If the Title IV-E review identified an individual payment that was not made in accordance with the law, then ACF disallowed that Title IV-E payment. If too many payments were disallowed in this first review, then ACF conducted a review of a larger sample of payments. Based on the proportion of disallowed payments found in this second review, ACF disallowed a proportion of the State's total annual Title IV-E funds.

    If the Tribe that had custody of the child had not certified its eligibility for Section 427 incentive funding and review, then the child's record also entered the population from which the State Section 427 record review sample was drawn. If the Section 427 review demonstrated that the required child welfare protections were not provided for a certain percentage of children, then ACF issued a disallowance against the State's Title IV-B child welfare monies.

13. 58 Fed. Reg. 54,222, Oct. 20, 1993.

14. The ACF has funded at least three different organizations to support the development of Tribal-State agreements for child welfare services and protections. Some of the funding was used for a conference which provided information to both Tribal and State representatives about the development of such agreements. In addition, some funding supported the development of an agreement model.

15. The Job Opportunities and Basic Skills Training (JOBS) program has no requirement for a matching share from Tribes. Under the Child Welfare Research and Demonstration program, the matching share required from Native American grantees is less than that for other

grantees and can be waived entirely.

16. If ACF were to pursue a direct funding approach, it would want to address the implications of this approach for those Tribes and States that have already developed effective relationships and administrative arrangements for sharing Title XX and/or Title IV-E funds.

17. The ACF recently affirmed the importance of the direct grants in a Program Instruction to States and Tribes: "The Department of Health and Human Services (HHS) believes that the direct funding of Indian Tribal Organizations (ITOs) strengthens Tribal child welfare services programs, as intended in the goals and requirements of the Social Security Act (the Act) as amended." See ACYF-PI-93-13, June 24, 1993.

18. Other block grants that DHHS awards directly to tribes include those for community services, alcohol and drug abuse and mental health services, preventive health and health services, primary care, and low-income home energy assistance.

The regulations for these block grants describe the direct funding approach: "The Secretary has determined that Indian tribes and tribal organizations would be better served by means of grants provided directly by the Secretary to such tribes and organizations out of the State's allotment of block grant funds than if the State were awarded its entire allotment. Accordingly, where provided for by statute, the Secretary will, upon request of an eligible Indian tribe or tribal organization, reserve a portion of a State's allotment and, upon receipt of the complete application and related submission that meets statutory requirements, grant it directly to the tribe or organization." [(45 C.F.R., sec. 96.40-.48; (1993)].

19. In an April 29, 1994 memorandum for the heads of executive departments and agencies, President Clinton stressed the importance of government-to-government relationships between Federal agencies and Tribes. In this memorandum, the President listed guidelines for executive branch activities to "ensure that the rights of sovereign Tribal governments are fully respected." (59 Fed. Reg. 22951, May 4, 1994.)

The BIA, according to the recently revised ICWA regulations, views its relationship with Tribes as one in which "the Federal government has a government-to-government relationship with the sovereign governments of federally recognized Indian tribes and Alaska native

villages as contemplated by Public Law 95-608. Therefore, federal funds for which a tribe is eligible are distributed directly to the tribe by a Federal Finance System." (59 Fed. Reg. 2249, Jan. 13, 1994.)

20. This burden might be somewhat less with Title XX grants because, as block grants, the demands on grantees and Federal agencies are deliberately minimized.

21. This nongovernment organization would need to be culturally appropriate, knowledgeable about Indian child welfare services and Federal grants administration, and willing to be subject to ACF monitoring.

22. Improving Children's Welfare: Learning from Iowa, National Conference of State Legislatures, Denver, CO, 1990.

23. The Indian Self-Determination and Education Assistance Act Amendments, P.L. 100-472, 1988, Title III - Tribal Self-Governance Demonstration Project.

24. The Indian Employment, Training, and Related Services Demonstration Act (P.L. 102-477). This legislation authorizes the waiver of any regulation, policy, or procedure promulgated by any of the four departments to allow for consolidation of similar programs. The legislation requires the DOI to develop a single report format for project activities and expenditures, and a single system of Federal oversight for the projects.

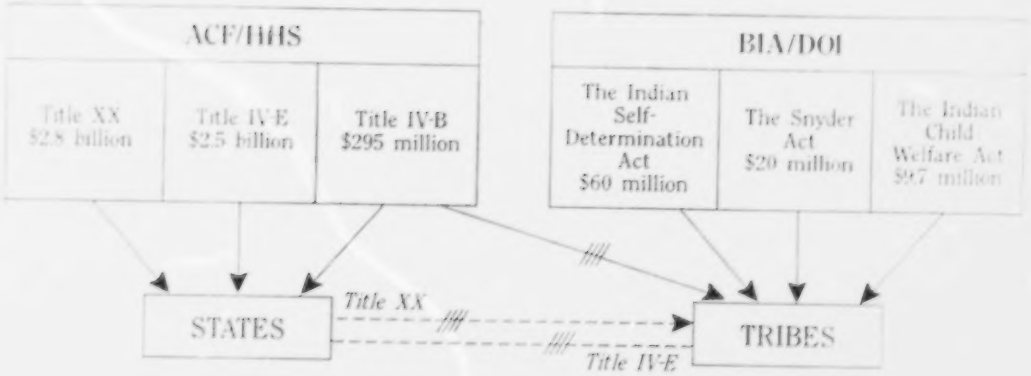
In addition, P.L. 95-134 Title V allows Insular Areas to consolidate various grants, including Title XX block grants, and formula grants for child welfare services and for child abuse and neglect (45 C.F.R. Sec. 97.12).

Insular areas include the Virgin Islands, Guam, American Samoa, Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands.

25. The ACF has demonstrated its commitment to finding more coherent approaches to improving opportunities for vulnerable children supported by its programs. The ACF Commissioner for Children, Youth and Families, for example, has affirmed the importance of the Federal government "putting the pieces together, because you can't make a difference for families if you are thinking only in narrow and categorical terms." See "ACYF Commissioner [Olivia Golden] Speaks Her Mind," Child Protection Report, Vol. 20, No. 2, p. 9, January 21, 1994.

Native American Children are Significantly Over-represented in Substitute Care

Federal Funding Streams
Tribal Child Welfare Services



Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

OPPORTUNITIES FOR ACF TO IMPROVE CHILD WELFARE SERVICES AND PROTECTIONS FOR NATIVE AMERICAN CHILDREN

JUNE GIBBS BROWN
Inspector General

AUGUST 1994
OEI-01-93-00110

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This report was prepared under the direction of Mark R. Yessian, Ph.D., Regional Inspector General, and Martha B. Kvaal, Deputy Regional Inspector General, Boston Region, Office of Evaluation and Inspections. Participating in this project were the following people:

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EXECUTIVE SUMMARY

PURPOSE

The purpose of this study is to identify opportunities for the Administration for Children and Families to strengthen the provision of child welfare services and protections to American Indian and Alaska Native children.

BACKGROUND

Indian Child Welfare Services

American Indian and Alaska Native children (hereafter, both are referred to as Native American children) are significantly over-represented in substitute care. According to the most recent data, about 9,000--16 of every 1,000--Native American children were in substitute care in 1986, compared with about 5 of every 1,000 children in the general population.

Many child welfare experts and Federal, State, and Tribal child welfare administrators have raised concerns about serious gaps in the provision of child welfare services and federally legislated child welfare protections to these children. Federal responsibility for funding these services and ensuring these protections rests with the Bureau of Indian Affairs (BIA) in the Department of the Interior and the Administration for Children and Families (ACF) in the Department of Health and Human Services (DHHS).

The Bureau of Indian Affairs

The BIA provides the largest amount of Federal funding for Tribal child welfare services. It funds child welfare services for federally recognized Tribes through the Snyder Act, the Indian Self-Determination Act, and the Indian Child Welfare Act. The Indian Child Welfare Act also stipulates child welfare protections for Tribal children in State custody: it establishes Federal standards for removing these children from their families and placing them in foster or adoptive homes that reflect the unique values of Tribal culture. The BIA does not fund States to provide child welfare services for Tribal children.

The Administration for Children and Families

The ACF funds State and some Tribal child welfare programs under three titles of the Social Security Act. Title IV-E supports State foster care and adoption assistance programs. Title XX supports State social services, including child welfare services. States may share these monies with Tribal child welfare agencies. Title IV-B supports States' and some Tribes' child welfare programs and family preservation and support services.

In addition to funding child welfare services, ACF monitors States and some Tribes to ensure their compliance with the Adoption Assistance and Child Welfare Act (P.L. 96-272), which specifies standards for agency planning and internal control systems, and the timely provision of certain child welfare services and protections to all children in public custody.

This Report

The ACF has already begun to take some important steps to better ensure services and protections for Native American children. This report responds to ACF's interest in identifying options for additional ways to make its funds more accessible to Tribes and better ensure child welfare protections for these children.

The report is based on data gathered from four primary sources: a mail survey of State child welfare agencies in those 24 States with the largest Native American populations; a review of data on ACF funding to Tribes and States; a review of relevant Federal legislation, regulations, and policy; and interviews and discussion groups with child welfare experts and administrators in ACF, BIA, State and Tribal child welfare agencies, and Native American child welfare organizations.

ACF FUNDING FOR TRIBAL CHILD WELFARE SERVICES

Most Tribes have received little or no Title IV-E or Title XX funding.

In 15 of the 24 States with the largest Native American populations, eligible Tribes received neither Title IV-E nor Title XX funds from 1989 to 1993. Among the factors that limit the Tribes' access to Title IV-E and Title XX funds are several Federal requirements.

- The Congress provided no authority for ACF to award Title IV-E and Title XX funds directly to Tribes; and legislation neither requires nor encourages States to share funds with Tribes.

- Efforts to develop the necessary Tribal-State Title IV-E funding agreements and Title XX funding arrangements are constrained by requirements that put States at financial risk for Tribes' use of Title IV-E funds, mandate a matching share for Tribes' Title IV-E funds, and necessitate Tribal negotiations for funding with multiple States in instances in which Tribal land extends across State borders.

Most Tribes have received little or no Title IV-B funding.

In 1993, 471 of the 542 federally recognized Tribes received no Title IV-B funds from ACF. Several Federal requirements constrain the Tribes' access to Title IV-B funds.

- The eligibility criteria for Title IV-B child welfare funds effectively exclude many Tribes.
- Because of the Title IV-B award formulas, few Tribes receive Title IV-B funds. Those Tribes that do receive funds receive relatively small grants.
- The application, review, and compliance requirements discourage Tribes from seeking the funds.

OVERSIGHT OF FEDERAL CHILD WELFARE PROTECTIONS

The ACF has monitored the Tribal provision of the child welfare protections required by the Adoption Assistance and Child Welfare Act, but few Tribal records have been reviewed.

- The ACF has conducted periodic administrative and case-record reviews of those Tribes that have certified their eligibility for incentive funding under Title IV-B, Section 427 of the Social Security Act; according to ACF records, 21 of the 542 Tribes certified their eligibility for fiscal year 1993 funding.
- The ACF sample-selection procedure for State Title IV-E and Title IV-B, Section 427 reviews has not guaranteed oversight of protections for those children in Tribal custody for whom Title IV-E payments are made by States.

Neither ACF nor any other Federal agency has ensured State compliance with the protections required by the Indian Child Welfare Act.

- The Act does not assign to any Federal agency the responsibility for assuring State compliance with its requirements.
- The DHHS and DOI have not implemented the provision of the Act that allows them to form agreements in support of child welfare services for Native American children.

OPPORTUNITIES FOR ACF TO IMPROVE CHILD WELFARE SERVICES AND PROTECTIONS

The ACF has an important role to play in facilitating the Tribes' access to Federal child welfare funding and strengthening Federal efforts to ensure that States and Tribes are providing required protections to Native American children.

We identify specific options for ACF to consider in these two areas: access to funds and oversight of protections. In the text, we discuss the implications of each for ACF, the Tribes, and the States. Many options could be implemented together; a few are mutually exclusive.

We recognize that making constructive change in this area requires sensitivity to the complex relationships among Tribes and States and various Federal agencies. To implement some options, ACF would need to change existing legal authorities. Other options entail difficult tradeoffs and politically sensitive choices. We also recognize that ACF faces growing program responsibilities at a time of increasing Federal financial constraints. Accordingly, in each area, we begin with those options that ACF could undertake in the near term with minimal investment of staff or program resources, and within existing legal authorities. We follow with other options that ACF could pursue over the longer term; these entail more fundamental changes in practices and relationships, changes in existing legal authorities, and/or larger investments of administrative or program resources.

As ACF considers future directions, we urge that it work closely with BIA, perhaps through the memorandum of agreement mechanism allowed by the Indian Child Welfare Act. Similarly, we urge ACF to involve Tribal and State government representatives in these deliberations as it has in other program and policy arenas in recent months.

Facilitating Tribes' Access to ACF Funds

The ACF could facilitate the Tribes' access to each of its three major child welfare funding streams: Title XX, Title IV-E, and Title IV-B. Because Title XX and Title IV-E funds have flowed from ACF to Tribes indirectly through the States, we consider them separately from Title IV-B funds that ACF awards directly to Tribes.

Title XX and Title IV-E funds

Option: Effective practices. Identify best practices and lessons learned from those States and Tribes that have successfully negotiated arrangements for sharing Title XX and/or Title IV-E funds. Disseminate the information widely to both States and Tribes and provide technical assistance as appropriate.

Option: State reporting. Establish routine reporting by States of their efforts to address the child welfare needs of Tribes in the States.

Option: Legal barriers to agreements. Change Federal requirements that have impeded the development of Tribal-State agreements. These include requirements that (1) States assume financial risk for Tribes' use of Title IV-E funds; (2) a matching share be contributed for Tribe's Title IV-E funds; and (3) Tribes negotiate with multiple States for Title XX and/or Title IV-E funds when their land extends across State borders.

Option: Direct grants. Fund Tribes directly with Title XX and/or Title IV-E funds, as ACF has in some of its other programs.

Title IV-B funds

Option: Technical Assistance. Strengthen technical assistance to those Tribes that are eligible for and interested in obtaining Title IV-B funds.

Option: Eligibility. Broaden eligibility for Title IV-B funds by eliminating some of the requirements that limit the number of Tribes that qualify. These include requirements that Tribes must (1) have contracted with BIA for child welfare services in order to qualify for Title IV-B Subpart 1 child welfare base funding, (2) be located in States meeting the Section 427 protection requirements before they are eligible for Title IV-B Subpart 1 child welfare incentive funding; and (3) qualify for a Title IV-B Subpart 2 fiscal year 1995 allotment of at least $10,000 to receive any family preservation and support services monies.

Option: Funding streams. Further streamline requirements for plans, applications, and reporting. Pursue consolidation of funding streams for ACF's child welfare and related programs, and for those of other Federal agencies, especially BIA.

Strengthening Federal Child Welfare Protections for Native American Children

The ACF could take steps to strengthen compliance with the protections required by the Adoption Assistance and Child Welfare Act and/or the protections required by the Indian Child Welfare Act. We present our options for each separately.

Protections Required by the Adoption Assistance and Child Welfare Act

Option: Sampling tribal records. Examine more records for children in the custody of Tribes for whom Title IV-E payments are made by States.

Option: **Protections and BIA grantees.** Invite BIA, Tribal, and State representatives to examine the differences between the child welfare protections required by the Adoption Assistance and Child Welfare Act for all children in State custody and the child welfare protections required by BIA for children in Tribal custody to ensure that adequate protections are ensured for all Native American children in public custody.

Protections Required by the Indian Child Welfare Act

Option: **Technical assistance.** Strengthen technical assistance to State child welfare agencies and State courts to improve their understanding of the protections required by the Indian Child Welfare Act.

Option: **Ensuring States' compliance.** Establish clear authority for ACF to oversee the States' provision of the protections required by the Indian Child Welfare Act.

COMMENTS ON THE DRAFT REPORT

We solicited and received written comments on our draft report from ACF, the Public Health Service (PHS), and BIA. The complete text of these comments appears in appendix C. We are pleased that ACF, PHS and BIA all agree with the general direction and content of the report and that all three agencies volunteered their interest in working together to improve child welfare services and protections for Native American children.

The BIA requested that we omit from the final report our option to encourage or require some Tribal child welfare programs to provide for children in their custody the basic child welfare protections mandated by the Adoption Assistance and Child Welfare Act. The BIA suggested that the implementation of this option could result in an increased administrative burden for Tribes without a corresponding increase in funding. In addition, the BIA advised against the unilateral imposition of any new ICWA program requirements. In response to the BIA concern, we have revised the option to clarify our intent that ACF work with BIA, Tribal, and State representatives to ensure that Federal requirements provide adequate protections for Native American children in either State or Tribal custody.

INTRODUCTION

PURPOSE

The purpose of this study is to identify opportunities for the Administration for Children and Families to strengthen the provision of child welfare services and protections to American Indian and Alaska Native children.

BACKGROUND

Concerns about American Indian and Alaska Native Children in Substitute Care

American Indian and Alaska Native children (hereafter, both are referred to as Native American children) are significantly over-represented in substitute care. According to the most recent data, which appeared in a 1988 report prepared for the Administration for Children and Families (ACF) and the Bureau of Indian Affairs (BIA), Native American children represented .9 percent of the total 1986 U.S. population of 63.8 million children, but 3.1 percent of the 287,000 children in substitute care. About 9,000--16 of every 1,000--Native American children were in substitute care, compared with about 5 of every 1,000 children in the general population.[1]

Child welfare services for Native American children are provided primarily by either Tribes or States. According to the 1988 report, Tribal child welfare programs provided care for 35 percent of the 9,000 Native American children in substitute care and State-administered programs provided care for 52 percent. The BIA and off-reservation programs served the remaining children.[2]

In the 1988 report and in discussions with the Office of Inspector General, child welfare experts, along with Federal, State, and Tribal child welfare administrators raised concerns about serious gaps in the provision of child welfare services and federally legislated child welfare protections to Native American children. Major concerns include the inconsistent provision of some federally mandated child welfare protections by States, and the limited capacity of some Tribes to provide child welfare services--attributable, in part, to difficulties obtaining Federal funds that could be used to strengthen Tribal programs.

Federal Oversight and Funding

Both BIA in the Department of the Interior (DOI) and ACF in the Department of Health and Human Services (DHHS) are responsible for Federal funding of child welfare services and oversight of child welfare protections for Native American children.

The BIA Role: The BIA serves as the focal point for Federal programs for American Indians and Alaska Natives.[3] Within BIA, the Division of Social Services administers a broad range of programs, including child welfare services, for Tribal members. The BIA provides child welfare services funding to Tribal governments or those who care for Tribal children under three laws: The Indian Child Welfare Act (ICWA) (P.L. 95-608); the Snyder Act [ch. 115, 42 Stat. 208 (1921)]; and the Indian Self-Determination Act (P.L. 93-638). The BIA does not fund States to provide child welfare services for Tribal children.

Through ICWA, BIA provides grants for Tribal child welfare programs.[4] In fiscal year 1993, BIA distributed about $9.7 million in ICWA grants to 375 Tribes (see appendix A for a discussion of this and other funding for Tribal child welfare services from BIA and ACF).[5]

In addition to providing funding, ICWA stipulates child welfare protections for Tribal children in State custody. The law establishes Federal standards for removing these children from their families and placing them in foster or adoptive homes that reflect the unique values of Tribal culture.

Under the Snyder Act, BIA provides child welfare assistance payments as additional support for child welfare services for Tribal children. These payments are made, however, only when Tribes are unable to obtain funds from other sources. In 1993, BIA distributed a total of about $20 million in child welfare assistance payments to support an average monthly caseload of 3020 children.[6]

The Indian Self Determination Act (P.L. 93-638) provides legal authority under which some Tribes have contracted with BIA to administer their own child welfare services with funds that BIA would have expended on the administration of those services.[7] According to the most recent data available, 154 Tribes received about $60.2 million in 1992 to administer their own social services.[8] Some of these monies supported child welfare services, but the exact amount is unknown.

The ACF Role: The ACF directs, funds, and oversees programs for vulnerable children and families in the United States. Within ACF, the Children's Bureau supports State and Tribal programs to provide child welfare, foster care, adoption, and family preservation and support services.[9] These programs are funded under three titles of the Social Security Act: Titles IV-E, XX and IV-B. The ACF awards funds under these three Titles to support State child welfare services for all children, including Native American children, in State custody.[10] States may share these monies with Tribal child welfare agencies.[11] The ACF also awards Title IV-B funds directly to some Tribes.

Title IV-E is the largest source of Federal funding that supports foster care and adoption services. In 1993, ACF distributed about $2.54 billion in Title IV-E funds.[12]

Title XX, the Social Services Block Grant program, supports many social services programs, including those for child welfare. In 1993, $2.8 billion was allotted for social services.

Title IV-B provides smaller amounts to support child and family services. In 1993, $295 million was appropriated for Subpart 1 of Title IV-B to support both base funding and Section 427 incentive funding for child welfare programs.[13] Title IV-B Subpart 2 was created by the Family Preservation and Support Act, which was passed as part of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66). Subpart 2 will provide $60 million for family preservation and support services in 1994.[14]

In addition to funding child welfare services, ACF oversees the provision of child welfare protections mandated by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).[15] This law ties child welfare services funding under Titles IV-E and IV-B Subpart 1 to compliance with requirements for child welfare programs. Further, it specifies standards for agency planning and internal control systems, and the timely provision of certain child welfare services and protections to all children in public custody. The law requires that each State receiving Title IV-E funds provide child welfare services to all eligible children, including Native American children, in the State. Tribes may assume responsibility for providing these services to Tribal children. In all instances, ACF expects States to coordinate with Tribes for the provision of services and protections to Tribal children who are in public custody.

The Objectives of this Report

The ACF has already begun to take some important steps to better ensure services and protections for Native American children. This report responds to ACF's interest in identifying options for additional ways to make its funds more accessible to Tribes and better ensure child welfare protections for these children. Accordingly, the first section of the report summarizes the extent to which Tribes are now able to access ACF's child welfare and family services funding.[16] It also summarizes the current status of oversight for the provision of federally legislated child welfare protections to Native American children.[17] Further, it identifies those factors that constrain ACF in its efforts to ensure that services and protections are provided to these children.

The second section of the report identifies a variety of options for ACF to consider as it develops plans for future efforts to ensure child welfare services and protections for Native American children. We recognize that ACF's consideration of some of these options will occur as part of the broader review it has begun of its oversight mechanisms for State child welfare programs.

METHODOLOGY

Our report is based on data gathered from four primary sources. First, to determine the amount of Title IV-E and Title XX funding that States share with Tribes, we conducted a mail survey of State child welfare agencies in those 24 States with the largest Native American populations (see appendix B for a summary of the survey results).[18] Second, we reviewed ACF data on the amount of Title IV-B Subpart 1 child welfare funding that ACF awards to Tribes and States. Third, we reviewed relevant Federal legislation, regulations, and policy.

Finally, we spoke with child welfare experts and administrators in ACF and BIA, and in State and Tribal child welfare agencies, and American Indian child welfare advocacy organizations. We held telephone discussions with ACF Indian child welfare staff in 9 regions; a discussion group with child welfare administrators representing 10 States; and 2 discussion groups with Indian child welfare administrators and Indian child welfare experts representing 17 Tribal child welfare agencies from 8 States and 2 organizations that provide education about Indian child welfare services and protections.[19]

We conducted our review in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

ACF FUNDING FOR TRIBAL CHILD WELFARE SERVICES

Most Tribes have received little or no Title IV-E or Title XX funding.

In 15 of the 24 States with the largest Native American populations, eligible Tribes received neither Title IV-E nor Title XX funds from 1989 to 1993.[20] In 1993 alone, these 15 States received $1,714 million in Title IV-E funds and $1,289 million in Title XX funds.

Nine of the 24 States reported that some Tribes in their States received Title IV-E and/or Title XX funds in 1993. (See Table 1.)

Eight States reported that 46 Tribes received $1.9 million --2.3 percent--of the States' $82 million Title IV-E funds, while 4 States reported that 32 Tribes received $2.8 million --2.9 percent--of the States' $98 million Title XX funds. (For additional results from the OIG mail survey, see appendix B.)

TABLE 1: OF THE TWENTY-FOUR STATES WITH THE LARGEST NATIVE AMERICAN POPULATIONS, NINE SHARED TITLE IV-E AND/OR TITLE XX FUNDS WITH ELIGIBLE TRIBES IN 1993.

State[a]	Number of Tribes[b]	Title IV-E Funds[c] Number of Tribes		Title XX Funds[c] Number of Tribes	
		Funded	*Eligible*	*Funded*	*Eligible*
AK	223	0	NA[d]	0	NA
AZ	20	0	20	20	21
CA	102	0	NA	0	NA
CO	2	2	2	0	2
FL	2	0	NA	0	NA
ID	4	0	6	0	NA
KS	4	0	NA	0	NA
MI	7	0	NA	0	NA
MN	6	0	NA	0	NA
MT	7	4	7	0	NA
NE	0	2	2	0	NA
NV	16	0	NA	0	NA
NM	23	5	23	2	22
NY	7	0	0	0	0
NC	1	0	NA	0	NA
ND	4	4	4	0	NA
OR	36	24	27	0	NA
OK	9	2	9	8	9
SD	9	3	9	2	9
TX	1	0	NA	0	NA
UT	7	0	NA	0	NA
WA	27	0	NA	0	NA
WI	11	0	NA	0	NA
WY	2	0	NA	0	NA
TOTAL	557[e]	For 11 States: 46/108		For 6 States: 32/63	

[a] According to both the *Indian Service Population and Labor Force Estimates* (Bureau of Indian Affairs, January 1991) and the *Resident Population Distribution for the United States, Regions, and States by Race and Hispanic Origin* (Bureau of the Census, 1990), this list of 24 States comprises those 20 that had the largest Native American populations in absolute numbers and those 20 that had the largest Native American populations as percentages of the total State populations.

[b] List of federally recognized Tribes (58 Fed. Reg. 54,222, Oct. 20, 1993).

[c] Survey of 24 State Child Welfare Departments, Office of Inspector General, Fall 1993.

[d] "NA" indicates that the information was not available from the State.

[e] Tribes whose land extends into multiple States have been counted in each State.

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Between 1989 and 1993, the number of States that shared these funds with Tribes, the number of Tribes receiving the funds, and the amount of money they received, as a percentage of the States' aggregate funding, increased very little.[21]

The Tribes' access to Title IV-E and Title XX funds is constrained by some important factors, which are summarized below.

- The Congress provided no authority for ACF to award Title IV-E and Title XX funds directly to Tribes; and legislation neither requires nor encourages States to share funds with Tribes.

The ACF requires that formal Title IV-E funding agreements be achieved before States transfer Title IV-E monies to Tribes. These funding agreements define the responsibility of the Tribes to meet the requirements of P.L. 96-272 and they outline the conditions under which States will transfer funds. States and Tribes are allowed greater flexibility in making arrangements for the transfer of Title XX funds. Such arrangements may include contracts, grants, or other State-approved mechanisms for the transfer of funds and the provision of social services.

- Efforts to develop Tribal-State Title IV-E funding agreements and Title XX funding arrangements are constrained by several factors.

Disputes Between Tribes and States about Issues Unrelated to Child Welfare: In many cases, to arrive at Title IV-E funding agreements and Title XX funding arrangements, the two governments must circumnavigate longstanding points of contention about such issues as land and jurisdiction. Several of the child welfare administrators and experts with whom we spoke indicated that a fundamental lack of trust between State and Tribal representatives contributed to the incidence of protracted and/or failed negotiations. One State child welfare administrator reported that disagreements over land rights and jurisdiction had prevented his State from reaching an agreement with a Tribe. An Indian child welfare expert reported that Tribal sovereignty became a key issue in negotiations between another State and a Tribe when the State suggested that the funding agreement would be contingent upon the Tribal adoption of the complete set of State child welfare policies and procedures.

State Responsibility for Tribal Compliance with the Requirements of P.L. 96-272 for Title IV-E Funds: Some States are reluctant to form Title IV-E agreements with Tribes because, according to law, the States are then accountable for Tribal compliance with the requirements of Title IV-E and, in some instances, Title IV-B. Thus, States can lose both Title IV-E and Section 427 incentive funds if Tribal records are out of compliance.[22] Officials that we interviewed from two States volunteered that ACF had disallowed Title IV-E payments that the States had transferred to Tribes.

The Matching Share Requirement for Title IV-E Funding: Officials from States that have Title IV-E agreements with Tribes told us that their States assume responsibility for the Tribal portion of the Title IV-E matching share. Other States, however, may be less willing or able to do so, and most of the State and Tribal child welfare administrators with whom we spoke agreed that many Tribes would have difficulty fulfilling the matching share requirement.

Tribal Land that Extends into Multiple States: In cases in which Tribal land extends across State borders, Tribes must negotiate Title IV-E funding agreements and Title XX funding arrangements with each of the States involved. For example, the reservation of the Navajo Nation, one of the largest Tribes in this country, extends into Arizona, New Mexico, and Utah. To obtain all of the Title IV-E and Title XX funds for which it might qualify, this Tribe would have to conclude six separate negotiations with the three States. To date, the Navajo have received no Title IV-E funding at all; they have received Title XX funds from Arizona and New Mexico. At least eight federally recognized Tribes have land that extends into multiple States.[23]

Most Tribes have received little or no Title IV-B funding.

In fiscal year 1993, 471 of the 542 federally recognized Tribes received no Title IV-B child welfare funds from ACF. Of the 59 that did receive base child welfare funding, only 21 were eligible to receive incentive funds. In all, the 59 Tribes received about $762,000--.3 percent--of the nearly $295 million Title IV-B child welfare funds awarded. This is a slight increase in funding from 1989, when 29 Tribes received about $461,000--.2 percent--of the nearly $246.7 million in Title IV-B funds.[24] A few important factors limit the Tribes' access to Title IV-B funds. These are discussed below.

- The eligibility criteria for Title IV-B child welfare funds effectively exclude many Tribes.

P.L. 96-272 indicates that Tribal eligibility for Title IV-B base child welfare funding is contingent upon ACF approval of the child welfare services plan for the State in which the Tribe is located.[25] The ACF program instructions further specify that Tribal eligibility for Section 427 incentive funding is dependent upon State compliance with the requirements of the Section 427 review.[26] According to ACF records, however, at least four States--Alaska, California, Connecticut, and Massachusetts--have been out of compliance in recent years.[27] The 344 federally recognized Tribes located in these States were ineligible for Section 427 incentive funds in the years that the States were out of compliance.[28]

The ACF regulations also require that, to be eligible for this funding, a Tribe must have a P.L. 93-638 self-determination contract or grant with BIA to provide its own child welfare services. Tribes that have neither, but that do, nonetheless, provide

some child welfare services with ICWA grants or other funds, are ineligible to receive Title IV-B child welfare funds. The ACF is considering a regulatory change to address this issue.

- Because of the Title IV-B award formulas, few Tribes receive Title IV-B funds. Those Tribes that do receive funds receive relatively small grants.

The formula that ACF uses to calculate the amount of the Title IV-B child welfare base-funding awards results in many grants being quite small.[29] Furthermore, ACF requires Tribes to contribute a 25 percent matching share, in cash or in kind, for this funding. Of the 59 Tribes that were funded in 1993, 8 received annual Title IV-B child welfare funding of less than $1000. The mean amount of the Title IV-B child welfare grants awarded to the 59 Tribes was about $12,900.[30] The ACF is considering a regulatory change to the Title IV-B base-award formula that would double the amount of grant funding to individual Tribes.

P.L. 103-66 mandates that 1 percent of the annual appropriation of the new Title IV-B funding for family preservation and support services be set aside for Tribes. The law ties Tribal allotments to population counts, however, and it prohibits allotments to Tribes that qualify for less than $10,000. The ACF estimates that 41 of the 542 federally recognized Tribes will be eligible for funding.

- The application, review, and compliance requirements discourage Tribes from seeking the funds.

In our discussions with State and Tribal child welfare administrators and experts, most agreed that it is more difficult for Tribes than for States to obtain available funding. Tribal child welfare programs have fewer staff and a higher staff turn-over rate than their State counterparts. Many tribal child welfare programs also lack staff with grant writing expertise. In addition, Tribes seeking support for their child welfare programs must meet the different eligibility, application, review, and compliance requirements for each piece of funding they are able to obtain from Federal, State, local, or private sources.

For many Tribes, the requirements tied to ACF's Title IV-B child welfare funding--contracting services from BIA, submitting child welfare plans to ACF, certifying and demonstrating compliance with Section 427, and contributing a 25 percent matching share--have been particularly burdensome, given the relatively small amounts of funding available.[31]

OVERSIGHT OF FEDERAL CHILD WELFARE PROTECTIONS

The ACF has monitored the Tribal provision of the child welfare protections required by P.L. 96-272, but few Tribal records have been reviewed.

- The ACF has conducted periodic administrative and case-record reviews of those Tribes that have certified their eligibility for Section 427 funding; according to ACF records, 21 of the 542 Tribes certified their eligibility for fiscal year 1993 funding.

According to P.L. 96-272, only these 21 Tribes are required to undergo the periodic Section 427 administrative and case-record reviews to determine that children in Tribal custody are receiving the child welfare protections required by Section 427.[32] The ACF is now re-evaluating these reviews and other of its oversight mechanisms, however, and has postponed additional reviews.

- The ACF sample-selection procedure for State Title IV-E and Section 427 reviews has not guaranteed oversight of protections for those children in Tribal custody for whom Title IV-E payments are made by States.

Title IV-E payments made by a State for children in Tribal custody have been included in the pool from which a random sample has been drawn for the ACF review of all of the State Title IV-E payments. If the Tribe that has custody of the children has not certified its eligibility for Section 427 incentive funding and review, then the children's records have also been included in the pool from which the State Section 427 record review random sample has been drawn.[33]

Neither ACF nor any other Federal agency has ensured State compliance with the protections required by the Indian Child Welfare Act.

Many Tribal, State, BIA, and ACF child welfare administrators and Native American child welfare experts expressed concerns about States' inconsistent provision of the ICWA protections. The extent to which States do comply with the law, however, is unknown because no Federal agency has monitored compliance.

- The ICWA does not assign to any Federal agency the responsibility for assuring State compliance with the requirements of the Act.

The BIA, to which the Act is addressed, has no funding or other formal relationships with State child welfare agencies. Thus, it has no means by which to provide either technical assistance or oversight for State compliance with the law.

The ACF, in part because it lacks clear jurisdiction, has provided little technical assistance to States related to ICWA. Many of the regional ACF staff who have responsibility for Indian child welfare issues indicated that they are unclear about the role they should play in encouraging or assisting the States to comply with the law.

- The DHHS and DOI have not implemented the ICWA provision that allows them to form agreements in support of child welfare services for Native American children.

The ICWA allows DOI and DHHS to enter into agreements for establishing, operating, and funding Indian child and family service programs, both on and off reservations. Through such agreements, ACF and BIA could clarify responsibility for ensuring State compliance with the requirements of the law. No such agreement, however, has been formed in the 15 years since the passage of the Act.

OPPORTUNITES FOR ACF TO IMPROVE CHILD WELFARE SERVICES AND PROTECTIONS

The Federal, State, and Tribal child welfare administrators and child welfare experts with whom we spoke identified important problems with Federal financing of Tribal child welfare services and with Federal oversight of child welfare protections for Native American children. Access to Federal funds can be difficult for many Tribes, and Federal efforts to ensure that the States and Tribes are providing the required protections to children have been limited.

The ACF has an important role to play in addressing these issues. As we have noted in this report, ACF has already taken some steps to remedy these problems and is considering others. The ACF staff have asked OIG to identify options to consider as part of this process. We identify specific options for ACF to consider in two areas: access to funds and oversight of protections. Many options could be implemented together; a few are mutually exclusive.

We recognize that making constructive change in this area requires sensitivity to the complex relationships among Tribes and States and various Federal agencies. To implement some options, ACF would need to change existing legal authorities. Other options entail difficult tradeoffs and politically sensitive choices. In addition, some of options we identify are best considered in the context of the reevaluation that ACF is currently conducting of its oversight processes.

We also recognize that ACF faces growing program responsibilities at a time of increasing Federal financial constraints. Accordingly, in each area, we begin with those options that ACF could undertake more readily with minimal investment of staff or program resources, and within existing legal authorities. We follow with other options that ACF could pursue over the longer term; these entail more fundamental changes in practices and relationships, changes in existing legal authorities, and/or larger investments of administrative or program resources.

As ACF considers future directions, we urge that it work closely with BIA, perhaps through the memorandum of agreement mechanism authorized by the ICWA statute. The BIA has long-established programs for child welfare services and it is important for ACF to take these into account as it considers which options to pursue. Similarly, we urge ACF to involve Tribal and State government representatives in these deliberations, as it has in other program and policy arenas in recent months. Both have major investments in child welfare programs for Native American children and have long histories of dealing with each other and with the Federal government on these issues.

FACILITATING TRIBES' ACCESS TO ACF FUNDS

The ACF could facilitate the Tribes' access to each of its three major child welfare funding streams: Title XX, Title IV-E, and Title IV-B. Because Title XX and Title IV-E funds have flowed from ACF to Tribes indirectly through the States, we consider them separately from Title IV-B funds that ACF awards directly to Tribes.

Title XX and Title IV-E funds

Option: Effective practices. *Identify best practices and lessons learned from those States and Tribes that have successfully negotiated Title IV-E funding agreements and Title XX funding arrangements. Disseminate the information widely to both States and Tribes and provide technical assistance as appropriate.* This option would require minimal resources to implement and could provide potentially valuable insights to States and Tribes, which often struggle with this process. In pursuing this option, ACF could build on its experiences with the few research and demonstration projects it has funded to support the development of Tribal-State agreements.[34] The ACF could also assess the feasibility of developing a model funding agreement to provide guidance on Federal standards and expectations. Pursuing this option, however, would not address the more intractable barriers to the formation of these funding agreements/arrangements that result from Federal legal requirements.

Option: State reporting. *Establish routine reporting by States of their efforts to address the child welfare needs of Tribes in the States.* The ACF does not now routinely receive information from States on the needs of Tribes, the nature of Tribal service programs, or the extent to which States share either Title XX or Title IV-E funds with Tribes. Fuller reporting would provide ACF with better information about the circumstances of those Tribes with which it has no other contact, and could serve as an incentive for States to share more Title XX and Title IV-E funds. This reporting might require legal authority, but could be incorporated into the joint-planning process that ACF conducts with States for Title IV-B child welfare funds.

Option: Legal barriers to agreements. *Change Federal requirements that have impeded the development of Tribal-State agreements. These include requirements that (1) States assume financial risk for Tribes' use of Title IV-E funds; (2) a matching share be contributed for Tribe's Title IV-E funds; and (3) Tribes negotiate with multiple States for Title XX and/or Title IV-E funds when their land extends across State borders.* Changing these requirements would involve legal action and so is a longer-term approach, but one that could alleviate some of the more fundamental barriers to the flow of funds from States to Tribes.

In eliminating the financial risk to States for the Tribes' use of IV-E monies, ACF would remove a major disincentive for States. The ACF could still ensure appropriate management of the funds by holding the Tribes themselves accountable for their performance, as it does in other programs. Allowing relief from the Title IV-E matching-share requirement would reduce the financial burden on States and would

allow those Tribes with limited resources to receive funds with little or no match. Such a reduction or elimination of matching share requirements for Tribal funding has been implemented in other ACF programs[35]. Finally, designating a lead State for negotiations and the transfer of funds is one possible approach to simplifying the process for those Tribes with land that extends across State borders.

Option: Direct grants. *Fund Tribes directly with Title XX and/or Title IV-E funds, as ACF has in some of its other programs.* This option would be the surest route to facilitating the Tribes' access to these two important funding streams. It would, however, require legislative action and would entail fundamental changes in relationships, processes, and resources.[36]

The precedent for ACF to fund Tribes directly already exists.[37] The agency deals with Tribes directly in funding, for example, the Title IV-B child welfare and family preservation and support grants, the JOBS program, and the Child Care and Development Block grants.[38] Many Tribal officials told us they would welcome this approach. It would facilitate their access to the funds, and would be more consistent with Tribal sovereignty.[39] With this direct approach, ACF could ensure that Tribal grantees have the capacity to provide quality services and are properly accountable for the Federal funds.

On March 24, 1994 a bill (H.R. 4162) that would mandate a three-percent set aside of Title XX monies for Tribes was introduced into the Congress. Direct Title XX grants to Tribes might be opposed by States, however; such grants would increase financial pressures on States because the grants would be drawn from the States' allotments.[40]

With respect to Title IV-E funding, most State officials with whom we talked favored ACF dealing directly with Tribes. This direct approach for Title IV-E would eliminate the need for Tribal-State agreements and, because Title IV-E is an uncapped Federal entitlement, would not affect the monies available to the States.

This direct approach for Title IV-E would, however, increase Federal outlays as more Tribes seek reimbursement. It would also heighten demands on ACF to strengthen its own expertise, to provide more technical assistance to Tribes, and to manage an administrative process for more grantees.[41] Given the heavy demands on its administrative resources, ACF could alleviate this burden somewhat by such strategies as contracting for technical assistance to Tribes, as it is now considering, and integrating its monitoring efforts with those of its other programs. The ACF could also examine the feasibility of using a nongovernment organization for reviews of plans and applications, for grants administration, or for monitoring, as well as for technical assistance. In so doing, ACF could retain important authorities such as those for setting policy and priorities, for approving Federal expenditures, and for hearing appeals.[42]

Title IV-B funds

Title IV-B funds are important to Tribes: Even though they have been the smallest source of Federal funds for child welfare services, they can support a wide range of programs. They are also the one funding source for Tribes over which ACF has direct control. As noted earlier, ACF has recently taken some steps, such as simplifying requirements for the IV-B child welfare plans, to facilitate the Tribes' access to these funds. In continuing these efforts, ACF could pursue the following:

Option: Technical Assistance. *Strengthen technical assistance to those Tribes that are eligible for and interested in Title IV-B child welfare and/or family support and preservation funds.* The ACF regional office staff could provide intensified support to these Tribes with conference calls and periodic meetings that address specific concerns raised by the Tribes and the various components of the Title IV-B funding requirements. This option would benefit those Tribes with fewer staff, lesser grant-writing expertise, and lesser programmatic knowledge. In addition, it could be implemented without a major investment of time and without additional legal authority.

Option: Eligibility. *Broaden eligibility for Title IV-B funds by eliminating some of the requirements that limit the number of Tribes that qualify. These include requirements that Tribes must (1) have contracted with BIA for child welfare services in order to qualify for Title IV-B Subpart 1 child welfare base funding, (2) be located in States meeting the Section 427 protection requirements before they are eligible for Title IV-B Subpart 1 child welfare incentive funding; and (3) qualify for a Title IV-B Subpart 2 fiscal year 1995 allotment of at least $10,000 to receive any family preservation and support services monies.* Any of these changes would require ACF to seek legal amendments to their authorities--a long-term, time-consuming process. Broadening eligibility for Title IV-B base and incentive funding could heighten financial pressures on the States; more Tribes may well be funded and the States' allotments would be reduced accordingly. Changing the requirement for family preservation funds, on the other hand, would have no financial impact on the States because Tribal grants are limited to one percent of the annual appropriation. This change would, however, likely reduce grant amounts for those Tribes that now qualify for funding. The ACF is considering a proposal to eliminate the BIA contract requirement. Further experience with grant awards under the new family preservation legislation could help inform ACF's decision about revising this eligibility requirement.

Option: Funding streams. *Further streamline requirements for plans, applications, and reporting. Pursue consolidation of funding streams for ACF's child welfare and related programs, and for those of other Federal agencies, especially BIA.* Further simplifying requirements and consolidating funding streams would significantly reduce the burden facing many Tribes that must piece together support from several funding sources, each with its own requirements and often with its own program staff.

The ACF has begun to simplify the planning requirements for Title IV-B programs. It could take additional steps to develop strategies for simplifying the application and reporting processes. It could support pilot projects with a few Tribes to "decategorize" the Title IV-B funding streams, or those along with other related funding. In so doing, ACF could draw on others' experiences, such as Iowa's decategorization initiative for child welfare services.[43] The ACF could also pursue the consolidation of funding streams through the efforts of the Intra-Departmental Council on Native American Affairs, which was recently reestablished with a revised charter.

The ACF could take advantage of already existing authority for the Secretaries of DOI and DHHS to support about 30 Tribal self-governance projects, in which the funding for several Federal programs is consolidated.[44] It could also pursue broader legislative authorities to consolidate funding streams for Tribes. The DHHS, together with the Departments of Education, Interior, and Labor, currently have authority, for example, to integrate their funding for Tribes' employment, training, and related services.[45] This authority might serve as a useful model for legislation allowing consolidation of the child welfare funding streams.

Further collaboration between ACF and BIA under the terms of a memorandum of agreement offers rich opportunities to simplify grant requirements and/or consolidate funding streams. The BIA's programs support child welfare services for many more Tribes than ACF currently reaches, and they involve significantly more Federal dollars than ACF currently provides to Tribes.

Many Federal, State, and Tribal child welfare administrators with whom we spoke urged ACF to take steps to simplify and consolidate grant programs.[46] Developing a simpler, more coherent Federal approach would be difficult and time consuming. Yet, this course of action offers, in their opinion, significant potential for achieving real improvement in the Federal government's approach to funding the Tribes' child welfare programs. Other lesser steps, they suggest, will address the problems only at the margin.

STRENGTHENING FEDERAL CHILD WELFARE PROTECTIONS FOR NATIVE AMERICAN CHILDREN

The ACF could take steps to strengthen compliance with the protections required by P.L. 96-272 and/or the protections required by ICWA. We present separately our options for each.

Protections of P.L. 96-272

Option: Sampling tribal records. *Examine more records for children in the custody of Tribes for whom Title IV-E payments are made by the State.* The protocol for drawing samples of records for the States' Title IV-E and Section 427 reviews has not ensured that any records for these children would be included in the samples. The ACF's current effort to develop different approaches to monitoring its programs presents an

opportunity to identify ways to strengthen its oversight of the Tribes' compliance with the P.L. 96-272 protections. Any new process, perhaps through more representative sampling, needs to ensure that Tribes are as accountable as the States for providing these protections. A more extensive review of Tribal records need not pose greater financial risk to the States if ACF were to hold the Tribes themselves accountable for their performance, as suggested in an option above.

Option: Protections and BIA grantees. *Invite BIA, Tribal, and State representatives to examine the differences between the child welfare protections required by the Adoption Assistance and Child Welfare Act for all children in State custody and the child welfare protections required by BIA for children in Tribal custody.* Tribes that receive Title IV-E and/or Title IV-B incentive funds are required to provide the P.L. 96-272 child welfare protections for children in their custody. Tribes that receive BIA funding for child welfare services are required to adhere to the social service guidelines in the BIA manual. If ACF, BIA, Tribal, and State representatives were to examine the differences between the P.L. 96-272 requirements and the BIA manual guidelines, the group might decide that some differences are justified by cultural or other important considerations while other differences should be eliminated. Such an effort could clarify child welfare protection requirements for Tribes and could simplify compliance requirements for Tribes that receive BIA funds and Title IV-E and/or Title IV-B incentive funds.

If the group were to agree that the required child welfare protections for children in Tribal custody should be amended, it could pursue a legislative remedy to this end. The group could also collaborate in developing and providing technical assistance to Tribes about existing and any newly mandated protections and means of ensuring their provision to children in the custody of Tribal child welfare agencies.

This option need not necessitate ACF monitoring of Tribes' compliance. The ACF and BIA could work together under the terms of a memorandum of agreement to address this issue and they could assess the feasibility of incorporating a monitoring process into BIA's already-required annual evaluations of Tribal grantees. Pursuing this option, however, could be a time-consuming, long-term effort.

Protections of P.L. 95-608 (ICWA)

Option: Technical assistance. *Strengthen technical assistance to State child welfare agencies and State courts to improve their understanding of the ICWA protections.* The ACF could rely on its regional office staff to work more intensively with the States. They could provide State officials with information about the protections and share information about any lessons learned from the States' experiences in implementing ICWA.[47] They could invite BIA staff to discuss ICWA protections in ACF conference calls and in various ACF meetings with State officials. They could encourage those State courts applying for the new grants authorized by the family preservation legislation to examine their handling of the ICWA protections as part of the overall assessment of their foster care and adoption proceedings.[48] This option

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could be accomplished without significant investment of time and without additional authority, but it would likely require ACF to improve its expertise about ICWA.

Option: Ensuring States' compliance. *Establish clear authority to oversee the States' provision of the ICWA protections.* The ACF has established, extensive relationships with State child welfare agencies and has long monitored the States' compliance with the general child welfare protections of P.L. 96-272. Thus, ACF has valuable experience that it could apply to overseeing the States' compliance with the ICWA protections, which apply only to Tribal children in State custody.

In establishing a clear basis of authority, ACF could work with BIA under the terms of a memorandum of agreement to spell out its responsibilities.[49] Alternatively, ACF could seek a legislative remedy, either as an amendment to the ICWA statute, or as a requirement that States assure compliance with the ICWA protections as part of their Title IV-B plans.[50]

Implementing this option would result in a somewhat increased administrative burden for ACF. It would require strengthening staff expertise, developing program guidance for State child welfare agencies and State courts, and developing a compliance review process. It would, however, allow ACF to meet the important need for Federal oversight of these protections. As ACF redesigns its monitoring processes more generally, it could address ways to include the ICWA protections in its reviews of the other child welfare protections required of the States.[51]

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COMMENTS ON THE DRAFT REPORT

We solicited comments on our draft report from ACF, the Public Health Service (PHS), the Assistant Secretary for Planning and Evaluation (ASPE), the Assistant Secretary for Management and Budget (ASMB), the Assistant Secretary for Legislation (ASL) and BIA. The ACF, PHS, and BIA returned written comments on our report. The full text of these comments is included in appendix C. The ASMB concurred with our report without comment. The ASPE and ASL declined written comment.

We are pleased that ACF, PHS, and BIA agree with the general direction and content of the report and that all of the three agencies volunteered their interest in working together to improve child welfare services and protections for Native American children.

The ACF requested that OIG staff participate in the initial meetings between the Children's Bureau and the Bureau of Indian Affairs to assist them in acting on the report options. The OIG welcomes the opportunity to work with ACF and looks forward to participating in meetings to improve child welfare services and protections for Native American children.

The BIA requested that we omit from the final report our option to encourage or require some Tribal child welfare programs to provide for children in their custody the basic child welfare protections mandated by the Adoption Assistance and Child Welfare Act. The BIA suggested that the implementation of this option could result in an increased administrative burden for Tribes without a corresponding increase in funding. In addition, the BIA advised against the unilateral imposition of any new ICWA program requirements.

In response to the BIA concern, we have revised this option. We now suggest that ACF could engage BIA, Tribal, and State representatives in an examination of the differences between the child welfare protections required by the Adoption Assistance and Child Welfare Act for all children in State custody and the child welfare protections required by BIA for children in Tribal custody. Together, the group might decide that some differences are justified by cultural or other important considerations while other differences should be eliminated. Such an effort could clarify child welfare protection requirements for Tribes and could simplify compliance requirements for Tribes that receive BIA funds and Title IV-E and/or Title IV-B incentive funds.

APPENDIX A

MAJOR FUNDING FROM ACF AND BIA FOR TRIBAL CHILD WELFARE SERVICES IN FISCAL YEARS 1992 AND 1993

	FUNDING AUTHORITY	Fiscal Year 1992	Fiscal Year 1993
ACF	The Social Security Act (Title XX)	• $2.8 billion was allotted for all social services in the U.S. • $1.5 billion was distributed to the 24 States we surveyed.[1] Of this, $2.8 million (.2 percent) reached Tribes.	• $2.8 billion was allotted for all social services in the U.S. • $1.5 billion was distributed to the 24 States we surveyed.[1] Of this, $2.8 million (.2 percent) reached Tribes.
	The Social Security Act (Title IV-E)	• $2.5 billion was expended. • $1.7 billion was distributed to the 24 States we surveyed.[1] Of this, $1.4 million (.1 percent) reached Tribes.	• $2.9 billion was expended. • $1.8 billion was distributed to the 24 States we surveyed.[1] Of this, $1.9 million (.1 percent) reached Tribes.
	The Social Security Act (Title IV-B Subpart 1) Child Welfare Services	• $274 million was expended. • Of this, $491,533 (.2 percent) reached Tribes.	• $295 million was appropriated. • Of this, $762,000 (.3 percent) reached Tribes.
	The Social Security Act (Title IV-B Subpart 2) Family Preservation and Support Services	• Funding begins in fiscal year 1994. $60 million is authorized for that year with $600,000 (1 percent) set aside for Tribes.	
BIA	The Indian Child Welfare Act (P.L. 95-608)	• $14.2 million was distributed to Tribes.	• $9.7 million was distributed to Tribes.[2]
	The Indian Self Determination Act (P.L. 93-638)	• $60.2 million was distributed to support social service programs administered by Tribes.[3]	• $60 million was distributed to support social service programs administered by Tribes.[4]
	The Snyder Act [ch. 115, 42 Stat. 208 (1921)]	• $16 million was distributed for child welfare assistance payments for Tribal children.	• $20 million was distributed for child welfare assistance payments for Tribal children.

Sources:
- *Title XX Allotments to States Social Services, 1989 - 1993*. Administration for Children and Families.
- *Title IV-E Expenditures*. Administration for Children and Families.
- Title IV-B Subpart 1 *Fiscal Year 1994 Budget*. U.S. Department of Health and Human Services. April 8, 1993, p. 94.
- Title IV-B Subpart 2 *The Family Preservation and Support Act* (P.L. 103-66).
- Mail survey of 24 State Child Welfare Departments. Office of Inspector General. Fall 1993.
- The Office of Tribal Services and the Division of Social Services in the Bureau of Indian Affairs; and
- *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin, 1990*. Bureau of the Census, and *Indian Service Population and Labor Force Estimates, January 1993*. BIA.

Notes:
- The list of 24 States (Alaska, Arizona, California, Colorado, Florida, Idaho, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming) includes those 20 States that had the largest Native American populations, in absolute numbers, and those 20 States that had the largest Native American populations, calculated as a percentage of the total State populations.

1. The FY 1993 ICWA allocation for Tribes was originally set at $19.09 million, of which about 8.4 million was re-programmed.
2. Of the $60.2 million, approximately 27.2 million came from the BIA Social Services budget to pay for Tribal social services staffing. The remaining $33 million came from a BIA indirect cost pool and paid for contract support and indirect administrative costs.
3. Of the $60 million, approximately 29 million came from the BIA Social Services budgets and $32 million came from the BIA indirect cost pool.

For descriptions of each funding program, see pages A-2 - A-3.

Funding Programs Administered by ACF[52]

Title XX of the Social Security Act: The Social Services Block Grant Program. Title XX of the Social Security Act was created in 1974 by P.L. 92-672, which authorized entitlement funding for States to support social services with certain goals, requirements and limitations. In 1981, P.L. 97-35 amended Title XX to establish a block grant for social services. These block grants are allocated to States on the basis of population, and are available without a State matching share requirement. From 1980 to 1993, Title XX entitlement funding declined in real dollars by 55 percent.[53]

Title XX funding supports State programs to address five legislated goals, including preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests; and preserving, rehabilitating or reuniting families.[54] While the law places some restrictions on the use of Title XX monies, States are allowed much discretion in determining the services they will provide and the groups that are eligible for these services. States are further allowed to determine the proportion of funds that will support service provision and the proportion of funds that will be used for staff training, administration, planning, evaluation, and technical assistance. For fiscal years 1983 through 1991, the most frequently provided services were: day care for children; home-based services; protective services for children; adoption services; social-support services; and special services for the disabled.

States may share funds with private agencies and Tribes to provide Title XX services.

Title IV-E of the Social Security Act: The Foster Care and Adoption Assistance Programs. In 1980, P.L. 96-272 transferred the Title IV-A foster care program to Title IV-E of the Social Security Act, specified protections for children in foster care, and established a new adoption assistance program under Title IV-E. Foster care funding is available only for children whose families are eligible for Aid for Families with Dependent Children (AFDC); adoption assistance funding is provided for special needs children who are eligible for AFDC or supplemental security income (SSI). Title IV-E funds are provided as Federal matching funds.[55] From 1981 to 1993, spending for foster care and adoption assistance grew from $309 million to over $2.5 billion.

States may contract with private agencies and form agreements with Tribes to provide Title IV-E services.

Title IV-B Subpart 1 of the Social Security Act: The Child Welfare Services Program. Title IV-B Subpart 1 is a capped entitlement program that provides 75 percent matching-share grants to States and Tribes for a broad range of child welfare services. Grant amounts are calculated with a formula using the State's or Tribe's under-21 population and per-capita income. These funds can be used to pay for services for all children. P.L. 96-272 mandated certain protections for foster care children and made additional Subpart 1, Section 427, incentive funding available to States and Tribes, contingent upon the provision of these protections. From 1981 to 1993, Title IV-B spending for child welfare services increased from $164 million to $295 million.

Title IV-B Subpart 2 of the Social Security Act: The Family Preservation and Support Services Program. Title IV-B Subpart 2 of the Social Security Act is a capped entitlement program that was created in 1993 by the Family Preservation and Support Act (P.L. 103-66). Subpart 2 grants are allocated on the basis of population and provide a 75 percent Federal match to support State and Tribal provision of family preservation services and community-based family support services. From 1994 to 1998, authorized Subpart 2 funding will increase from $60 million to at least $255 million. One percent of the annual appropriation is to be set-aside for Tribes that qualify for at least $10,000 in funding.

Funding Programs Administered by BIA

The Indian Child Welfare Act (ICWA) Grant Program. The ICWA (P.L. 95-608) authorizes grants to federally recognized Tribes and organizations to support the establishment and operation of Indian child and family service programs on or near reservations and to support the preparation and implementation of child welfare codes. The ICWA grants were originally awarded competitively. Beginning in fiscal year 1994, however, ICWA monies will be made available to all federally recognized Tribes as formula grants. The law specifies that ICWA funds may be used by Tribes to meet the matching share requirements of other Federal programs for child and family services funding. The ICWA grant funding for Tribes has increased from $7.2 million in 1989 to $22.9 million in 1994.

The Indian Self-Determination Act Contract and Grant Programs. The Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) and the Indian Self-Determination Amendments of 1987 (P.L. 100-472) direct the BIA to establish service contracts with Tribes that want to provide for themselves the services that BIA would otherwise have provided for them. These contracts can be established only with those Tribes that reside in States that are not recognized as primary service providers for the Tribes. When contracts are established, the BIA transfers to the Tribes the funds the Federal agency would have expended in the delivery of the services and additional funds for indirect costs (such as rent and telephone use).

The BIA also awards discretionary self-determination grants to some Tribes to prepare them to administer service contracts or to improve their administration of services for which contracts have already been established. The self-determination grants, which are awarded on a competitive, one-time basis, can be used to meet the matching share requirements of other Federal funding programs; the contract monies cannot.

The Snyder Act Child Welfare Assistance Program. The Snyder Act [ch. 115, 42 Stat. 208 (1921)] authorized BIA expenditures for the benefit, care, and assistance of the American Indian population. The funds are used for general support, education, relief, and conservation of health, among other purposes; and are provided only when Tribal members cannot obtain such assistance from other sources. Through the Snyder Act, BIA provides monies to members of federally recognized Tribes for child welfare assistance, including foster care, residential care, and special needs.

APPENDIX B

TITLE IV-E AND TITLE XX FUNDS SHARED BY STATES WITH TRIBES: RESULTS OF THE MAIL SURVEY CONDUCTED BY THE OFFICE OF INSPECTOR GENERAL

In the fall of 1993, the Office of Inspector General conducted a mail survey of the 24 States with the largest Native American populations. We collected information on the amount of Title IV-E and Title XX funds these States shared with Tribes from fiscal year 1989 through fiscal year 1993. All 24 States completed and returned the survey.

We determined the size of the Native American populations in these States using both the 1991 *Indian Service Population and Labor Force Estimates*, prepared by the Bureau of Indian Affairs, and the 1990 *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin*, prepared by the Bureau of the Census. The list of 24 States comprises those 20 that had largest Native American populations in absolute numbers and those 20 that had the largest Native American populations as percentages of the total State populations.

On the following pages are tables that summarize the demographic and financial information we collected.

Tables

1 The 24 States with the largest Native American populations: Total population statistics from the Bureau of the Census and the Bureau of Indian Affairs

2 The 24 States with the largest Native American populations: Population statistics for children under age 16 from the Bureau of the Census and the Bureau of Indian Affairs

3 Title XX and Title IV-E funds shared by nine States with eligible Tribes, summary for fiscal years 1989 through 1993

4 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1989

5 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1990

6 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1991

7 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1992

8 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1993

TABLE 1
THE 24 STATES WITH THE LARGEST NATIVE AMERICAN POPULATIONS:
TOTAL POPULATION STATISTICS
FROM THE BUREAU OF THE CENSUS AND THE BUREAU OF INDIAN AFFAIRS[1]

STATE	BUREAU OF THE CENSUS (1990)[2]			BUREAU OF INDIAN AFFAIRS (1991)[3]		
	TOTAL STATE POPULATION	NATIVE AMERICAN POPULATION		Number of Tribes[4]	TRIBAL POPULATION	
		Number	Percent of total population		Number	Percent of total population
AK	550,043	85,698	15.58	222[5]	88,160	16.03
AZ	3,665,228	203,527	5.55	20	169,771	4.63
CA	29,760,021	242,164	0.81	102	38,722	0.13
CO	3,294,394	27,776	0.84	2	2,529	0.08
FL	12,937,926	36,335	0.28	2	2,488	0.02
ID	1,006,749	13,780	1.37	4	9,830	0.98
KS	2,477,574	21,965	0.89	4	2,685	0.11
MI	9,295,297	55,638	0.60	7	12,890	0.14
MN	4,375,099	49,909	1.14	6	22,423	0.51
MT	799,065	47,679	5.97	7	38,181	4.7[illegible]
NE	1,578,385	12,410	0.79	6	5,245	0.33
NV	1,201,833	19,637	1.63	16	9,477	0.79
NM	1,515,069	134,355	8.87	23	112,751	7.44
NY	17,990,455	62,651	0.35	7	15,548	0.09
NC	6,628,637	80,155	1.21	1	10,114	0.15
ND	638,800	25,917	4.06	4	24,093	3.77
OK	3,145,585	252,420	8.03	36	257,403	8.18
OR	2,842,321	38,496	1.35	9	12,305	0.43
SD	696,004	50,575	7.27	9	59,519	8.55
TX	16,986,510	65,877	0.39	1	2,548	0.02
UT	1,722,850	24,283	1.41	7	10,038	0.58
WA	4,866,692	81,483	1.67	27	51,643	1.06
WI	4,891,769	39,387	0.81	11	21,651	0.44
WY	453,588	9,479	2.09	2	7,255	1.60
Total for 24 States	133,319,894	1,681,596	1.26	535[6]	987,269	0.74
Total US	248,709,873	1,959,234	0.79	542	1,001,441	0.40

Sources:
[1] *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990*, Bureau of the Census.
[2] *Indian Service Population and Labor Force Estimates*, January 1991, Bureau of Indian Affairs, and List of Tribes that have been recognized by the Bureau of Indian Affairs (58 Fed. Reg. 54,222, Oct. 20, 1993).

Notes:
The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

[3] Recognized Alaska Native entities include Tribes, villages, communities, associations, and corporations.

[4] Tribes whose land extends into multiple States have been counted in each State.

TABLE 2
THE 24 STATES WITH THE LARGEST NATIVE AMERICAN POPULATIONS:
POPULATION STATISTICS FOR CHILDREN UNDER AGE 16[1]
FROM THE BUREAU OF THE CENSUS AND THE BUREAU OF INDIAN AFFAIRS

STATE	BUREAU OF THE CENSUS (1990)[2]						BUREAU OF INDIAN AFFAIRS (1991)[3]		
	STATE POPULATION			NATIVE AMERICAN POPULATION			TRIBAL POPULATION		
		Under Age 16			Under Age 16[4]			Under Age 16[4]	
	Total	Number & Percent of State Population		Total	Number & Percent of Native American Population		Total	Number & Percent of Tribal Population	
AK	550,043	157,485	28.63	85,698	31,769	37.07	88,160	31,018	35.18
AZ	3,665,228	882,470	24.08	203,527	77,346	38.00	169,771	52,767	31.08
CA	29,760,021	6,978,035	23.45	242,164	66,000	27.25	98,722	11,205	28.94
CO	3,294,394	775,969	23.55	27,776	8,202	29.53	2,529	971	38.39
FL	12,937,926	2,561,211	19.80	36,335	8,531	23.48	2,488	1,008	40.51
ID	1,006,749	276,972	27.51	13,780	4,564	33.12	9,830	3,967	40.36
KS	2,477,574	597,038	24.10	21,965	6,513	29.65	2,685	630	23.46
MI	9,295,297	2,191,548	23.58	55,638	16,791	30.18	12,890	3,707	28.76
MN	4,375,099	1,054,051	24.09	49,909	18,644	37.36	22,423	7,294	32.53
MT	799,065	199,316	24.94	47,679	18,065	37.89	38,181	14,187	37.16
NE	1,578,385	365,925	24.45	12,410	4,734	38.15	5,245	1,976	37.67
NV	1,201,833	267,893	22.29	19,637	5,691	28.98	9,477	3,511	37.05
NM	1,515,069	401,321	26.49	134,355	49,070	36.52	112,751	33,545	29.75
NY	17,990,455	3,800,149	21.12	62,651	17,064	27.24	15,548	4,301	27.66
NC	6,628,637	1,424,350	21.49	80,155	23,310	29.08	10,114	2,485	24.57
ND	638,800	157,722	24.69	25,917	10,580	40.82	24,093	8,906	36.97
OK	3,145,585	747,889	23.78	252,420	84,281	33.39	237,403	91,091	35.39
OR	2,842,321	650,202	22.88	38,496	11,907	30.93	12,305	4,262	34.64
SD	696,004	178,865	25.70	50,575	21,287	42.09	59,519	19,138	32.15
TX	16,986,510	4,331,339	25.50	65,877	16,528	25.09	2,548	728	28.57
UT	1,722,850	568,519	33.00	24,283	9,744	40.13	10,038	4,127	41.11
WA	4,866,692	1,138,105	23.39	81,483	26,426	32.43	31,643	17,452	33.79
WI	4,891,769	1,158,015	23.67	39,387	13,616	34.57	21,651	6,606	30.51
WY	453,588	121,587	26.81	9,479	3,345	37.40	7,255	2,378	32.78
Total for 24 States	133,779,894	31,005,996	23.26	1,661,596	554,208	32.96	967,269	327,260	33.15
Total U.S.	248,709,873	56,869,480	22.87	1,959,234	625,136	31.91	1,001,441	331,971	33.15

Sources: [1] *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990*, Bureau of the Census, and *Indian Service Population and Labor Force Estimates*, January 1991, Bureau of Indian Affairs.

Notes: The 1991 BIA statistics reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

The most recent data on the number of Native American children is somewhat old in all of the cases found 24 States is from 1990.

B - 3

TABLE 3
TITLE XX AND IV-E FUNDS SHARED BY NINE STATES[1] WITH ELIGIBLE TRIBES,
SUMMARY FOR FISCAL YEARS 1989 THROUGH 1993

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population[2]										
Bureau of Indian Affairs (1991) [d]	4.63	0.08	4.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990) [e]	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State [c]	$196,571	$185,327	$45,299	$89,502	$85,061	$37,159	$161,700	$155,414	$39,683	$1,015,716
Title XX Funds Shared with Tribes [d]	$5,906	0	0	0	$1,936	0	0	$319	$1,564	$9,725
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State [d, e]	3.00	0.00	0.00	0.00	2.28	0.00	0.00	0.21	3.94	0.95
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State [f]	$68,621	$63,362	$21,029	$41,532	$35,851	$18,566	$43,700	$79,775	$12,327	$384,843
Title IV-E Funds Shared with Tribes [d]	0	$101	$703	$464	$61	$2,129	$1,250	$77	$771	$5,556
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State [d, f]	0.00	0.16	3.34	1.12	0.17	11.45	2.86	0.10	6.25	1.44

Sources:

[a] Mail Survey of State Child Welfare Departments, Fall 1993, Office of Inspector General.
[b] *Title IV-E Report of Expenditures*, Administration for Children and Families.
[c] *Title XX Federal Allotments to States*, Social Services, 1989-1993, Administration for Children and Families.
[d] *Indian Service Population and Labor Force Estimates*, January 1991, Bureau of Indian Affairs, and
[e] *Resident Population Distribution for the United States, Regions, and States by Race and Hispanic Origin*, 1990, Bureau of the Census.

Notes:

[1] Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.

[2] The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo or Aleut, regardless of where they reside.

TABLE 4
TITLE XX AND TITLE IV-E FUNDS SHARED BY NINE STATES[1] WITH ELIGIBLE TRIBES AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS
FISCAL YEAR 1989

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population[2]										
Bureau of Indian Affairs (1991)[3]	4.63	0.08	4.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990)[4]	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State[5]	$36,535	$36,390	$9,123	$17,800	$16,474	$7,563	$36,813	$30,052	$7,886	$198,636
Title XX Funds Shared with Tribes[6]	$176	0	0	0	$322	0	0	0	$214	$712
Proportion of Eligible Tribes Receiving Title XX Funds[7]	20/20	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	0/NA	2/9	24/51
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State[8,9]	0.48	0.00	0.00	0.00	1.95	0.00	0.00	0.00	2.71	0.36
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State[5]	$8,061	$5,390	$1,406	$1,666	$3,916	$2,130	$7,437	$1,067	$2,226	$33,363
Title IV-E Funds Shared with Tribes[6]	0	0	0	$33	$4	$334	$260	0	$51	$666
Proportion of Eligible Tribes Receiving Title IV-E Funds[7]	0/20	0/1	0/NA	2/2	4/22	4/4	15/27	0/6	2/9	40/91
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State[8,9]	0.00	0.00	0.00	1.27	0.07	15.68	2.69	0.00	2.29	1.11

Sources

a Mail Survey of State Child Welfare Departments, Fall 1991, Office of Inspector General.
b *Title IV-E Report of Expenditures*, Administration for Children and Families.
c *Title XX Financial Statements* or *States Social Services*, 1991/1992, Administration for Children and Families.
d *Indian Service Population and Labor Force Estimates*, January 1991, Bureau of Indian Affairs, and
e *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin*, 1990, Bureau of the Census.

Notes

1 Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1991.

2 The 1990 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Individuals included from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent to reservations or other reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

TABLE 5
TITLE XX AND TITLE IV-E FUNDS SHARED BY NINE STATES[1] WITH ELIGIBLE TRIBES
AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS
FISCAL YEAR 1990

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
	Native Americans as a Percentage of the Total State Population[2]									
Bureau of Indian Affairs (1991)[d]	4.63	0.68	6.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990)[e]	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
	Title XX Funds (in thousands)									
Title XX Funds Received by the State[c]	$39,624	$37,476	$9,073	$17,821	$17,418	$7,684	$36,783	$30,574	$7,909	$204,162
Title XX Funds Shared with Tribes[a]	$198	0	0	0	$372	0	0	0	$265	$835
Proportion of Eligible Tribes Receiving Title XX Funds[a]	20/20	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	0/NA	2/9	24/51
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State[a,c]	0.50	0.00	0.00	0.00	2.14	0.00	0.00	0.00	3.34	0.41
	Title IV-E Funds (in thousands)									
Title IV-E Funds Received by the State[b]	$9,804	$6,955	$3,504	$6,813	$6,893	$3,207	$7,988	$14,254	$2,000	$61,418
Title IV-E Funds Shared with Tribes[b]	0	0	0	$24	$6	$302	$225	0	$115	$672
Proportion of Eligible Tribes Receiving Title IV-E Funds[a]	0/20	0/2	0/NA	2/2	4/22	4/4	19/27	0/9	2/9	31/95
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State[a,b]	0.00	0.00	0.00	0.35	0.09	9.42	2.82	0.00	5.75	1.09

Sources:

a Mail Survey of State Child Welfare Departments, Fall 1991, Office of Inspector General.
b *Title IV-E Report of Expenditures*, Administration for Children and Families.
c *Title XX Federal Allotments to States Social Services, 1989-1993*, Administration for Children and Families.
d *Indian Service Population and Labor Force Estimates, January 1991*, Bureau of Indian Affairs; and
e *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990*, Bureau of the Census.

Notes:

1 Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.

2 The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

TABLE 6
TITLE XX AND TITLE IV-E FUNDS SHARED BY NINE STATES[1] WITH ELIGIBLE TRIBES AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS
FISCAL YEAR 1991

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population[2]										
Bureau of Indian Affairs (1991)[A]	4.63	0.08	4.78	0.35	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990)[B]	5.55	0.84	5.87	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State[C]	$39,698	$37,391	$9,118	$18,146	$17,070	$7,555	$36,723	$31,342	$8,076	$204,919
Title XX Funds Shared with Tribes[D]	$1,844	0	0	0	$374	0	0	0	$314	$2,532
Proportion of Eligible Tribes Receiving Title XX Funds[E]	20/20	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	0/NA	2/9	24/51
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State[E, F]	4.67	0.00	0.00	0.00	2.19	0.00	0.00	0.00	3.89	1.24
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State[B]	$12,624	$8,530	$4,649	$7,957	$7,897	$3,377	$6,853	$15,600	$2,500	$71,954
Title IV-E Funds Shared with Tribes[G]	0	$10	0	$81	$18	$100	$250	0	$119	$978
Proportion of Eligible Tribes Receiving Title IV-E Funds[G]	0/20	2/2	0/NA	2/2	4/22	4/4	12/27	0/9	1/9	36/95
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State[G, F]	0.00	0.12	0.00	1.02	0.23	14.89	3.65	0.00	4.76	1.36

Sources:

A Mail Survey of State Child Welfare Departments, Fall 1991 (Office of Inspector General).
B Title IV-E Reports of Expenditures, Administration for Children and Families.
C Title XX Finance Allotments to States Social Services, 1991-1992, Administration for Children and Families.
D Indian Service Population and Labor Force Estimates, January 1991, Bureau of Indian Affairs, and
E Resident Population Distribution for the United States, Regions, and States by Race and Hispanic Origin: 1990, Bureau of the Census.

Notes:

1 Of the 24 States with the largest Native American populations, all but Texas in the South and the nine listed this shared Title XX funds. Title IV-E funds with eligible Tribes between 1989 and 1991.

2 The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. The statistics included from the BIA count only Native Americans who are not enrolled in federally recognized Tribes, but instead members who reside in urban or rural areas for which BIA has geographical or other responsibility. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut regardless of where they reside.

TABLE 7

TITLE XX AND TITLE IV-E FUNDS SHARED BY NBR STATES[1] WITH ELIGIBLE TRIBES AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS FISCAL YEAR 1992

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population[2]										
Bureau of Indian Affairs (1991) [3]	4.63	0.08	4.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990) [4]	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State [5]	$39,884	$37,193	$9,040	$18,069	$17,138	$7,603	$36,161	$31,629	$8,020	$204,537
Title XX Funds Shared with Tribes [6]	$1,844	0	0	0	$397	0	0	$148	$457	$2,846
Proportion of Eligible Tribes Receiving Title XX Funds [7]	20/20	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	6/9	2/9	30/60
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State [8, 9]	4.62	0.00	0.00	0.00	2.32	0.00	0.00	0.47	5.70	1.39
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State [5]	$17,283	$19,171	$4,344	$9,740	$8,315	$4,249	$9,470	$20,023	$2,435	$95,034
Title IV-E Funds Shared with Tribes [6]	0	$41	$171	$171	$22	$513	$275	$31	$216	$1,442
Proportion of Eligible Tribes Receiving Title IV-E Funds [7]	0/20	2/2	4/7	2/2	1/22	4/4	22/27	1/9	1/9	43/102
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State [8, 9]	0.00	0.21	3.94	1.76	0.26	12.07	2.90	0.15	8.87	1.52

Sources:

1. Mail Survey of State Child Welfare Departments, Fall 1993, Office of Inspector General.
2. *Title IV-E Report of Expenditures*, Administration for Children and Families.
3. *Title XX Federal Allotments to States Social Services, 1990-1993*, Administration for Children and Families.
4. *Indian Service Population and Labor Force Estimates, January 1991*, Bureau of Indian Affairs, and
5. *Resident Population Distribution for the United States, Regions, and States by Race and Hispanic Origin, 1990*, Bureau of the Census.

Notes:

1. Of the 25 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.

2. The 1991 estimate from the Bureau of Indian Affairs (BIA) [line] is much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes and Alaskan residents who reside in urban or rural areas not adjacent to reservations or their communities. The Bureau of the Census counts every individual who checks themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

TABLE 4
TITLE XX AND TITLE IV-E FUNDS SHARED BY NINE STATES[1] WITH ELIGIBLE TRIBES AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS
FISCAL YEAR 1993

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population[2]										
Bureau of Indian Affairs (1991) [a]	4.63	0.08	4.79	0.33	7.44	3.77	8.15	0.43	8.55	3.75
Bureau of the Census (1990) [e]	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State [b]	$41,030	$36,877	$8,943	$17,666	$16,991	$7,154	$35,220	$31,817	$7,792	$203,662
Title XX Funds Shared with Tribes [d]	$1,844	0	0	0	$471	0	0	$171	$314	$2,800
Proportion of Eligible Tribes Receiving Title XX Funds [e]	20/21	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	5/9	2/9	32/61
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State [d, c]	4.49	0.00	0.00	0.00	2.78	0.00	0.00	0.54	4.03	1.38
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State [b]	$20,849	$23,312	$5,127	$11,382	$6,790	$3,643	$10,012	$16,803	$3,136	$103,054
Title IV-E Funds Shared with Tribes [d]	0	$50	$332	$171	$11	$480	$300	$46	$270	$1,860
Proportion of Eligible Tribes Receiving Title IV-E Funds [e]	0/20	2/2	4/7	2/2	5/22	4/4	24/27	2/9	3/9	46/102
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State [d, c]	0.00	0.21	10.86	1.50	0.16	8.51	3.00	0.27	8.61	1.80

Sources

a Mail Survey of State Child Welfare Departments, Fall 1993, Office of Inspector General.
b *Title IV-E Report of Expenditures*, Administration for Children and Families.
c *Title XX Federal Allotments to States Fiscal Estimate, 1989-1993*, Administration for Children and Families.
d *Indian Service Population and Labor Force Estimates, January 1991*, Bureau of Indian Affairs, and
e *Resident Population Distribution for the United States, Regions, and States by Race and Hispanic Origin: 1990*, Bureau of the Census.

Notes

1 Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.

2 The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo or Aleut, regardless of where they reside.

APPENDIX C

COMPLETE COMMENTS ON THE DRAFT REPORT

In this appendix we present the full text of the comments we received on the draft report from the Administration for Children and Families (ACF), the Public Health Service (PHS) and the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI).

Comments from ACF	C-2
Comments from PHS	C-3
Comments from BIA	C-6

DEPARTMENT OF HEALTH & HUMAN SERVICES

IG	✓
SAIG	✓
OIG RB	
OIG EI	✓
OIG OI	
OIG CFAA	
OIG MP	
OGC/IG	
EXSEC	✓
DATE SENT	8/2

ADMINISTRATION FOR CHILDREN AND FAMILIES
Office of the Assistant Secretary
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

AUG 2 1994

TO: June Gibbs Brown
Inspector General

FROM: Mary Jo Bane
Assistant Secretary for
Children and Families

SUBJECT: Comments on Office of Inspector General Draft Report: "Opportunities for ACF to Improve Child Welfare Services and Protections for Native American Children," OEI-01-93-00110

Thank you for the opportunity to comment on your draft report of a study conducted on the opportunities for the Administration for Children and Families (ACF) to improve child welfare services and protections for Native American children.

The ACF agrees with the direction and content of this report. The report reflects in-depth knowledge and understanding of the complexities involved in the provision of child welfare services to this population and addresses our concerns for strengthening the provision of child welfare services and protections to American Indian and Alaskan Native children.

As you know, this report was the product of the diligent leadership of the Office of Inspector General (OIG) with the cooperation of concerned individuals and offices in ACF, specifically the Children's Bureau. We would like the OIG to continue its involvement in our efforts to improve services to this population. Although the report provides valuable information, at the exit conference ACF staff requested that the OIG staff who worked on the report join in the initial meetings between the Children's Bureau and the Bureau of Indian Affairs. This would provide all attending with access to the expertise developed by your staff. I hope you will agree to make OIG staff available for a short time after the final report is issued to assist us in acting on the recommended options.

We look forward to working with your Office on other issues pertaining to the improvement of services to children and families.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

MEMORANDUM

Rockville MD 20857

Date: AUG 3 1994

From: Deputy Assistant Secretary for Health Management Operations

Subject: OIG Draft Report: "Opportunities for ACF to Improve Child Welfare Services and Protections for Native American Children," OEI-01-93-00110

To: Inspector General

We have reviewed the subject draft inspection report and are providing the attached comments.

Anthony L. Itteilag

Attachment

IG	✓
SAIG	✓
PDIG	
DIG-AS	✓
DIG-EI	✓
DIG-OI	
AIG-CFAA	
AIG-MP	
OGC/IG	✓
EXSEC	✓
DATE SENT	8-4

PHS COMMENTS ON THE OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT: "OPPORTUNITIES FOR ACF TO IMPROVE CHILD WELFARE SERVICES AND PROTECTIONS FOR NATIVE AMERICAN CHILDREN," OEI-01-93-00110

General Comments

The overall report appears to have taken into consideration critical aspects of Administration for Children and Families (ACF) funded programs as they relate to Tribal programs and acknowledges the potential for improving the relationship between ACF and Tribal programs.

Child welfare services on Indian reservations need to be enhanced in terms of funding and professional expertise. Direct funding, rather than having to deal with State agencies, would be a better approach. Technical assistance for Indian Tribes regarding program administration and professional child welfare services needs to be emphasized.

Many of the options identified to rectify the weaknesses are realistic and achievable. The stated options for creating easier access to funds by Tribes are worth implementing if ACF makes funds available to Tribes.

We have the following comments on specific statements in the OIG report.

1. Page ii, "*Most Tribes have received little or no Title IV-E or Title XX funding.*" (second bullet, "Efforts to develop the necessary Tribal-State Title IV-E funding. . .")

State-Tribal agreements are very important and are necessary. Tribal Child Welfare Services should not be limited because of State lines, especially where reservations extend across State lines. Tribes should be allowed to exercise Federal jurisdiction in Tribal and State courts.

2. Page iii, third bullet, "The application, review, and compliance requirements discourage Tribes from seeking the funds."

Based on our experience in dealing with the application process for Title IV-E, we believe the process is complicated and set-up to discourage Tribes from seeking the funds. There needs to be technical assistance in the application process.

3. Page v, "Title IV-B funds," "Option: Technical Assistance"

We believe this is an excellent option for obtaining Title IV-B funds.

C-4

4. Page 15, "Protections of P.L. 96-272"

It is necessary to work closely with the Bureau of Indian Affairs (BIA) in establishing a protocol, which could include BIA or BIA Tribal contractors, in reviewing Title IV-E records and include ACF or State Protective Service workers in reviewing BIA and BIA contracted program records to ensure the basic protections identified by P.L. 96-272. Although the law applies specifically to ACF and States that receive Title IV-E payments, the basic protections are examples of good casework services which BIA and BIA contracted programs should be incorporating into substitute care services. Both ACF and BIA have a vested interest in pursing this for the benefit of all children.

5. Page 16, "Protections of P.L. 95-608 (ICWA)"

The options presented have potential for being effective. We believe it is the opinion of the OIG that the option to ensure States' compliance would result in an increased administrative burden for ACF. If the responsibility is shared with BIA, neither ACF nor BIA would have to assume the bulk of the work. Through a Memorandum of Agreement, ACF could make use of BIA expertise and staff to address the areas of concerns identified, e.g., strengthening staff expertise, developing program guidance for State child welfare agencies and State courts and developing a compliance review process.

We would recommend that ACF work with the Indian Health Service (IHS) Mental Health and Social Services program to implement the OIG options. Although IHS does not have responsibility for custody of children, the IHS provides services to children and families involved with State child protective agencies.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
Social Services
Mail Stop 310-SIB

JUL 27 1994

IG
SAIG X
PDIG
DIG-AS
DIG-EI X
DIG-OI
AIG-CFAA
AIG-MP
OCC/IG
EXSEC X
DATE SENT 8-5

Memorandum

To: Director, Office of Audit and Evaluation

From: AdIG Director, Office of Tribal Services Hilda A Manuel

Subject: Division of Social Services' Comments on the Office of Inspector General Draft Report Entitled, "Opportunities for ACF to Improve Child Welfare Services and Protections for Native American Children," dated June 1994

This memorandum officially transmits the Bureau of Indian Affairs (BIA), Division of Social Services' comments on various aspects of the above-referenced report as discussed during the July 7, 1994, telephone conference amongst Ms. Dana Miller, Project Leader for the report; Mr. David Hickman, Chief of the BIA's Division of Social Services; and Ms. Betty Tippeconnie, Branch Chief for Child and Family Services.

The report recommends that the Administration for Children and Families (ACF) within the Department of Health and Human Services improve its coordination with the BIA. However, there are no recommendations specifically addressed to the BIA.

The BIA appreciates the emphasis Ms. Miller placed on working with BIA and Indian organizations as she engaged in the research and developmental phases of the draft report. She is to be commended for mastering the complexities of the subject matter, for presenting the material with great clarity and for delineating realistic and reasonable recommendations on how federal agencies may improve child welfare services and protections to American Indian children.

C-6

The BIA fully supports and embraces the majority of the recommendations contained in the report, particularly the concepts of Indian tribes accessing more direct funding from ACF and the streamlining of administrative, application, and reporting procedures for all funding streams emanating from ACF. However, the BIA remains concerned about areas needing additional discussion and/or exploration beyond the current recommendations. Additionally, some clarifying program information is provided below in order to more accurately portray BIA and/or tribally-administered programs.

The first major area of concern is the recommendation to establish a new requirement for tribal Indian Child Welfare Act (ICWA) grant programs to provide basic child welfare protections as specified in Pub. L. 96-272 for children in tribal custody. Tribal ICWA grant programs are administered by tribes under the auspices of BIA funds. The effect of this new requirement would be to require tribes to create additional bureaucracies and to carry additional burdens without new resources. It can be surmised that tribes will not be very receptive to this recommendation. Moreover, in keeping with the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), it is the policy of the BIA that, before any new and or major program requirements are implemented, the BIA must consult with tribes. Because BIA or tribally-administered social services programs often provide substitute care for children through the BIA's child welfare assistance program, few tribes opt to have their ICWA programs provide this service. For this reason, the BIA strongly advises against the unilateral imposition of any new ICWA program requirements in the manner suggested, and respectfully requests that this particular recommendation be dropped from the report.

A second major area of concern relates to ongoing problems relative to the enforcement of State compliance with major provisions of Pub. L. 95-608, the Indian Child Welfare Act of 1978. Fifteen years after the enactment of the statute, the BIA and Indian tribes continually experience the reluctance and/or resistance of States to adhere fully to the ICWA (see attached letter). This problem could be alleviated to some degree if one agency is assigned the role of monitoring State compliance in this area.

Moreover, the BIA recommends that States, in consultation with tribes within their boundaries, develop, implement and assure compliance with the ICWA protections as part of their Title IV-B State plan. To date, there have been no consequences for State noncompliance. Thus, it is recommended that sanctions for noncompliance be addressed in some manner by ACF, perhaps through ACF program and or quality control reviews. Finally, to improve the capacity of States to fully implement the ICWA, it is further recommended that States institutionalize mandatory training on the ICWA mandates for new employees. Joint training with the BIA and tribes might also prove helpful.

Some tribes have entered into tribal-state agreements to implement the Title IV-E program on their reservations. However, many tribes have stated that they are not compensated on the same basis as state workers responsible for the supervision and monitoring of Title IV-E foster care children. Many of these agreements are more beneficial to the States than to tribes taking on extra burdens to administer a Title IV-E program. In the final analysis, direct funding to tribes would take care of this problem.

Addressing these issues in a timely and productive manner is of critical importance to Indian children, families and communities. We are exceedingly pleased that these matters have now been given the attention that they merit, and we are hopeful that this focus on various areas of concern will greatly improve outcomes for Indian children. The BIA has indicated its willingness to meet at any time with ACF to discuss this important draft audit report. To date, ACF has been unable to schedule such a meeting.

Attachment

ADMITTED: FLORIDA AND INDIANA

E. JOE TINKE, ESQ.
200 Windward Passage
Clearwater, Florida 34630
(813) 447-3215

Mail Correspondence Ofc-BIA

June 29, 1994

The Honorable Ada E. Deer, Assistant Secretary
Bureau of Indian Affairs
1849 C Street, N.W., Mail Stop 4140
Washington, D.C. 20240

Dear Ms. Deer,

I am writing to you concerning the enforcement of and compliance with the Indian Child Welfare Act enacted in 1978. I am an attorney practicing in Clearwater, Florida. I am involved in a lawsuit brought by my client, [redacted], a registered member of the Eastern Shawnee Tribe of Oklahoma in federal court. This case is designated [redacted], et al v. State of Florida et al (Case #93-[redacted]).

Very briefly, the case involves the removal of Ms. [redacted] two sons by the Florida Department of Health and Rehabilitative Services (H.R.S.) in 1989 on unsubstantiated charges of insufficient shelter and lack of food. H.R.S. made no inquiry as to the ethnic background of the children or my client even though the forms contain a space for this designation. Ms. [redacted] states that she informed the H.R.S. investigator that she received benefits from her tribe, however, H.R.S. chose not to follow the I.C.W.A. until Ms. [redacted] contacted her tribe who then contacted Indian Child Welfare in Oklahoma who then contacted Florida H.R.S.

One count of the complaint seeks to force H.R.S. to inquire whether the parties they investigate are Native American and if so, to follow the I.C.W.A. The Secretary of H.R.S., James Towey, according to the newspaper article enclosed, believes such an inquiry is too much to ask of his department. He stated that perhaps a name may be good enough or perhaps such an inquiry would be appropriate in a state such as South Dakota, but it would be too burdensome in Florida.

My client, the Florida Indian Alliance, Florida A.I.M., and myself agree that, in order for the I.C.W.A. to be effective, states must be required to inquire into the ethnic backgrounds as an initial part of any investigation. I have received inquiries from Texas, New Mexico, and Oklahoma regarding this case. I believe the B.I.A. and yourself should also take a position in

this matter. I am requesting that you and/or the B.I.A. assist in this effort by:

1) joining in this one count of the lawsuit or
2) filing a brief with the U.S. District Court for the Middle District of Florida in Tampa supporting the demand that Florida begin making appropriate inquiry or
3) addressing a letter to the Honorable Lawton Chiles, Governor of Florida and Secretary Towey requesting that the policy be changed to require the appropriate inquiry or
4) all of the above.

This is an important issue - one in which the B.I.A. can show that it will take positions supporting the preservation of the cultural heritage and continuity of members of the First Nations.

I look forward to your response.

Sincerely,

E. Joe Finke, Esq.

APPENDIX D

NOTES

1. *Indian Child Welfare: A Status Report. Final Report of the Survey of Indian Child Welfare and Implementation of the Indian Child Welfare Act and Section 428 of the Adoption Assistance and Child Welfare Act of 1980*, prepared by CSR, Inc. in Washington DC and Three Feathers Associates in Norman, Oklahoma, April 18, 1988, pp. ES/3 - 1/26.

   According to the report, 9,005 American Indian children were in substitute care in the United States on June 30, 1986.

   No more recent, comprehensive statistical information on Native American children in substitute care has been collected. The ACF report *Analysis of 1989 Child Welfare Data* presents information from 26 States, excluding Alaska, Colorado, Florida, Idaho, Kansas, Michigan, Montana, Nebraska, New York, North Carolina, Oklahoma, Oregon, and Wyoming, which are among the States with the largest American Indian populations.

2. Ibid. State-administered programs provided care for 4,643 (52 percent) of these children; Tribes provided care for 3,156 (35 percent); BIA provided care for 797 (9 percent), and off-reservation programs served 409 (5 percent).

3. The BIA programs only serve members of Tribes that the Bureau has formally acknowledged or recognized. This Federal recognition may be the result of a treaty, statute, executive or administrative order, or history of dealings between the Federal government and a Tribe.

   In order to achieve Federal acknowledgement or recognition, a Tribe that petitions the DOI must have governmental authority over its members and occupy a specified territory or community viewed as distinctly Indian. Other criteria for Federal acknowledgement include evidence that the tribe has been identified as an American Indian entity since 1900 and that tribal members are descendants of an historical Indian tribe or tribes that functioned as a single autonomous political entity [25 CFR 83.7 (1994)].

4. The ICWA grant monies can be used by tribes to meet the matching share requirements of other Federal funding programs.

   Beginning in FY 1994, ICWA funds will be included with social services administration funding and other human services funding in the Tribal Priority Allocations for Tribes' base human services funding. Accordingly, ICWA funds are no longer exclusively designated for child welfare services. The ICWA monies can be reprogrammed by the Tribes to support other Tribal Priority

BEST COPY AVAILABLE

Allocation programs, such as those for tribal government, general administration, resources management, public safety and justice, and education.

5. According to BIA data, the FY 1993 ICWA allocation was originally set at about $18.09 million. About $8.4 million in ICWA funds were re-programmed, however, to cover a shortfall in BIA education funding.

Through FY 1991, BIA distributed its ICWA funds according to a competitive process. In January 1994, BIA issued revised ICWA regulations, however, and the agency will now make funds available to all Tribes according to a grant formula.

Below are listed, for fiscal years 1989 through 1994, approximate ICWA funding amounts and the number of Tribes funded.

1989: $7.2 million 98 tribes
1990: $7.1 million 124 tribes
1991: $7.0 million 113 tribes
1992: $14.2 million 374 tribes
1993: $9.7 million 375 tribes
1994: $22.9 million 534 tribes

In 1994, ICWA grant awards to individual Tribes ranged in value from $29,446 to $750,000.

6. Below are listed, for fiscal years 1991 1992, and 1993, BIA estimates of the child welfare assistance payments made and the average monthly caseload of Tribal children for whom services were provided with these funds.

1991: $17.5 million 2,920 children
1992: $18 million 3,020 children
1993: $20 million 3,020 children

7. The BIA provides services for Tribes when these services are not provided by another entity. Through contracts and grants established under P.L. 93-638, Tribes can, instead, provide for themselves the services that BIA would have provided for them.

When a social services contract is established, BIA transfers to the Tribe the monies it would have spent in the operation of the social services program, additional monies for indirect costs such as rent and telephone use, and the welfare assistance payments that the BIA would have distributed for the care of Tribal members.

The BIA also awards monies through discretionary, competitive, one-time

P.L. 93-638 grants, which support Tribes in their efforts to become prepared to administer P.L. 93-638 contracts. The grants are also awarded to support Tribes in improving their administration of services for which a contract has already been established. The P.L. 93-638 grant monies can be used to meet the matching share requirements of other Federal funding programs, but the contract monies cannot be. According to BIA records, in FY 1994, a total of $4.2 million in Self-Determination discretionary grants was awarded to approximately 70 Tribes.

8. According to BIA, of the approximately $60.2 million that Tribes received, approximately $27.2 million was for Tribal social services staffing, and $33 million for contract support (or indirect administrative costs) related to the administration of the Tribal social services programs. In 1993, Tribes received a total of approximately $60 million, of which $28 million was for Tribal social services staffing and $32 million was for contract support. Funding for social services staffing comes from the BIA Social Services budget, while funds for contract support come from a separate budget.

9. The ACF National Center on Child Abuse and Neglect (NCCAN) provides additional funding to States for child protection and treatment programs under the Child Abuse Prevention and Treatment Act (P.L. 93-247 as amended). This funding includes Basic State grants (part I), Disabled Infants grants (part II), State Community-Based Child Prevention grants, and Children's Justice Act grants. In addition, NCCAN provides Emergency Services funding to States, and discretionary grants to both States and Tribes.

In FY 1993, $17 million was appropriated for part I grants, $3 million was appropriated for part II grants, $5.3 million was appropriated for State Community-Based Prevention, and $9.2 million was appropriated for Children's Justice Act grants. In addition, $19 million was appropriated for emergency services and $16 million was appropriated for discretionary grants.

10. The Adoption Assistance and Child Welfare Act defines "child welfare services" as "public social services which are directed toward the accomplishment of the following purposes: (A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the families; (E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of children away from their homes, in cases where the child cannot be returned

home or cannot be placed for adoption. [P.L. 96-272, sec. 425, 94 Stat. 519, (1980)]

11. Some States voluntarily provide their own funding for Tribal child welfare services.

Other States provide some child welfare services for Tribal children because they have a legal responsibility to do so. In 1953, Public Law 280 allowed States to assume extensive criminal and civil jurisdiction over Indian lands. Tied to this jurisdiction is the responsibility to provide a variety of services for Indians on these lands.

Fifteen States have assumed some P.L. 280 jurisdiction over some Indian lands: Alaska, Arizona, California, Florida, Iowa, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, Utah, Washington, and Wisconsin. As part of their legal responsibilities tied to P.L. 280, some of these States provide services, including child welfare services, for some Indians.

12. Title IV-E foster care funding is available only for children whose families are eligible for Aid for Families with Dependent Children (AFDC); adoption assistance funding is provided for special needs children who are eligible for AFDC or supplemental security income (SSI).

13. In both 1991 and 1992, about $274 million was allocated for Subpart 1.

14. The law authorizes 5 years of funding for Title IV-B Subpart 2, and it mandates a set-aside of 1 percent of the annual appropriation for Tribes. The total authorized funding levels for each fiscal year are listed below.

1994: $60 million
1995: $150 million
1996: $225 million
1997: $240 million
1998: the greater of $255 million or $240 million increased by an inflation factor.

15. Among the required protections are those to prevent the need for removing a child from his or her home, the development of a case plan and review system for each child, and the determination of goals for each child in foster care.

16. Our report does not address the role of all-terrain Indian organizations in providing child welfare services and protections for Tribal children.

17. Our report does not address ACF efforts to ensure the State provision of those protections specified in P.L. 96-272 to Native American children. For information about ACF oversight of the State provision of the P.L. 96-272 protections, see the draft report Oversight of Title IV-B Child Welfare Programs.

(OEI-01-00770), issued by the Office of Inspector General in January 1994.

18. To develop this list of 24 States, we used data from both the *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin, 1990*, produced by the Bureau of the Census, and the *Indian Service Population and Labor Force Estimates, January 1991*, produced by BIA.

The list of 24 States (Alaska, Arizona, California, Colorado, Florida, Idaho, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming) includes those 20 States that had the largest Native American populations, in absolute numbers, and those 20 States that had the largest Native American populations calculated as a percentage of the total State populations.

The 1991 BIA statistics reflect a much smaller Native American population than the 1990 Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

According to BIA data, the Tribal population in these 24 States represents 99 percent of the total U.S. population of members of federally recognized Tribes. According to the Bureau of the Census data, the Native American population in these States represents 86 percent of the total U.S. population of Native Americans.

19. The States represented in our discussion group were: Colorado, Montana, Oklahoma, Oregon, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Washington.

The Tribes represented in our discussion groups are located in Arizona, California, Idaho, Montana, Nebraska, Nevada, Oregon, and South Dakota.

20. While Tribal organizations may not have received any Title IV-E or Title XX funds from States to provide their own services, Tribal members are generally eligible for State services and may have received services provided by the State with Title IV-E and/or Title XX funds.

To be eligible for Title XX funds, Tribal organizations must administer social services programs and be prepared to make arrangements with the States in which they are located to receive funds and provide social services to members of the Tribes. Such arrangements can take the form of contracts, grants, or other State-approved funding mechanisms.

To be eligible for Title IV-E funds, Tribal organizations must administer child welfare programs that meet the standards specified by P.L. 96-272 and must be prepared to make formal Title IV-E funding agreements (as required by ACF) with the States in which they are located.

21. The number of States that shared Title IV-E funds with Tribes increased from five in 1989 to eight in 1993; the number of States that shared Title XX funds increased from three to four over this same period.

The amount of funding that Tribes received, as a percentage of the States' aggregate funding, also increased. The amount of Title IV-E funding that Tribes received increased from about 1.7 percent of the 5 States' aggregate funding in 1989 to about 2.3 percent of the 8 States' aggregate funding in 1993. The amount of Title XX funding that Tribes received increased, from about 1.2 percent of the 3 States' aggregate funding in 1989 to about 2.9 percent of the 4 States' aggregate funding in 1993.

The proportion of eligible Tribes receiving Title IV-E and Title XX funds also increased. In 1989, 5 States reported that 30 (32 percent) of the 95 eligible Tribes in the States received Title IV-E funds. In 1993, 8 States reported that 46 (45 percent) of the 102 eligible Tribes in the States received these funds. In 1989, 3 States reported that 24 (47 percent) of the 51 eligible Tribes in the States received Title XX funds. In 1993, 4 States reported that 32 (51 percent) of the 61 eligible Tribes in the States received these funds.

22. The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) barred ACF from issuing disallowances as a result of Section 427 and Title IV-E reviews until October 1, 1994. The ACF is now reevaluating its Section 427 review process and its other oversight mechanisms for State child welfare programs. Until recently, the ACF review process operated as follows:

When a State passed through Title IV-E monies from ACF for the care of a child who was in Tribal custody, then payments made for that child's care entered the pool from which a sample was drawn for the ACF review of State Title IV-E payments. If the Title IV-E review identified an individual payment that was not made in accordance with the law, then ACF disallowed that Title IV-E payment. If too many payments were disallowed in this first review, then ACF conducted a review of a larger sample of payments. Based on the proportion of disallowed payments found in this second review, ACF disallowed a proportion of the State's total annual Title IV-E funds.

If the Tribe that had custody of the child had not certified its eligibility for Section 427 incentive funding and review, then the child's record also entered the population from which the State Section 427 record review sample was drawn. If the Section 427 review demonstrated that the required child welfare

protections were not provided for a certain percentage of children, then ACF issued a disallowance against the State's Title IV-B child welfare monies.

23. 58 Fed. Reg. 54,222, Oct. 20, 1993.

24. From information supplied to OIG by ACF.

25. P.L. 96-272, "Title IV-E, Part B--Child Welfare Services", Sec. 428: "(a) The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this part directly to an Indian tribal organization within any State which has a plan for child welfare services provided under this part."

26. *ACYF-PI-93-10*, issued May 19, 1993: "For fiscal year 1993, the appropriation for the Child Welfare Services State Grant Program (title IV-B of the Social Security Act--the Act) is $294,624,000. In order to be eligible for a direct grant at the amount of their share of the $141,000,000, an Indian Tribe or Indian Tribal Organization (ITO) must meet the requirements of 45 CFR 1357.40 (a) - (e) and (g). *In order to be eligible for any funds above that level, up to their share of the $294,624,000, an ITO must: (1) be located in a State meeting the requirements of section 427 (a) or (b) of the Act;...*" (italics added).

27. *Children's Bureau - Policy, Review and Operations: 427 Status Report as of March 19, 1993*

28. The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) barred ACF from issuing disallowances as a result of Section 427 and Title IV-E reviews until October 1, 1994. Furthermore, ACF is now reassessing the Section 427 review and other of its child welfare oversight mechanisms.

29. The current formula takes into consideration the Tribe's resident population under age 21 and its per capita income. According to an ACF internal draft document, the current formula "results in an amount which bears approximately the same ratio to the total States' Title IV-B allotment as the product of 1.5 times the proportion of the Indian Tribe's resident population under age 21 to the State's total population under age 21."

30. In 1993, Title IV-B grant awards to individual Tribes ranged in value from $377 to $166,468.

31. The ACF requires Tribes seeking Title IV-B child welfare base funding to develop child welfare service plans with ACF. In June 1993, ACF issued program instructions that allow Tribes to submit plan documents that they prepared for BIA ICWA grant applications or other purposes. These new program instructions are intended to eliminate the administrative burden of applying for funds. Program instructions issued for Title IV-B family preservation and support services funding also allow Tribes to submit plan documents that they may have prepared for other purposes.

To obtain Section 427 incentive funding, Tribes that receive Title IV-B child welfare base funding must first certify that they are in compliance with the requirements of Section 427 and, thus, eligible. Tribes have then been subject to periodic reviews by ACF to verify their compliance and eligibility.

32. Among the required protections are those to prevent the need for removing a child from his or her home, the development of a case plan and review system for each child, and the determination of goals for each child in foster care.

33. The child welfare plans that are developed with ACF by the 59 Tribes that receive Title IV-B child welfare base funding have provided another mechanism for oversight of the Tribal child welfare programs. These plans, which must be submitted at least once every three years, describe the Tribes' child welfare services and the steps the Tribes will take to expand and strengthen their programs.

The ACF has monitored State child welfare programs through review of the Title IV-E and Title IV-B child welfare plans that it requires from States, through Title IV-E administrative, training, and payment reviews, through Section 427 administrative and case-record reviews, and through voluntary program reviews of State child welfare programs.

The ACF Title IV-E and Section 427 reviews have entailed an examination of samples of children's records to assure that the children's families are eligible for Title IV-E payments, adequate court and case-worker review has been conducted, the foster homes are licensed, individual payments are allowable, and the children are receiving the protections required by P.L. 96-272.

The ACF has conducted neither Title IV-E reviews nor program reviews of Tribal child welfare programs. Furthermore, ACF does not require Tribes to submit Title IV-E child welfare plans.

For more information about ACF oversight of State programs, see the draft report *Oversight of State Child Welfare Programs* (OEI-01-00770), issued by the Office of Inspector General in January 1994.

34. The ACF has funded at least three different organizations to support the development of Tribal-State agreements for child welfare services and protections. Some of the funding was used for a conference which provided information to both Tribal and State representatives about the development of such agreements. In addition, some funding supported the development of an agreement model.

35. The Job Opportunities and Basic Skills Training (JOBS) program has no requirement for a matching share from Tribes. Under the Child Welfare

Research and Demonstration program, the matching share required from Native American grantees is less than that for other grantees and can be waived entirely.

36. If ACF were to pursue a direct funding approach, it would want to address the implications of this approach for those Tribes and States that have already developed effective relationships and administrative arrangements for sharing Title XX and/or Title IV-E funds.

37. The ACF recently affirmed the importance of the direct grants in a Program Instruction to States and Tribes: "The Department of Health and Human Services (HHS) believes that the direct funding of Native American Tribal Organizations (ITOs) strengthens Tribal child welfare services programs, as intended in the goals and requirements of the Social Security Act (the Act) as amended." See *ACYF-PI-93-13*, June 24, 1993.

38. Other block grants that DHHS awards directly to tribes include those for community services, alcohol and drug abuse and mental health services, preventive health and health services, primary care, and low-income home energy assistance.

The regulations for these block grants describe the direct funding approach: "The Secretary has determined that Indian tribes and tribal organizations would be better served by means of grants provided directly by the Secretary to such tribes and organizations out of the State's allotment of block grant funds than if the State were awarded its entire allotment. Accordingly, where provided for by statute, the Secretary will, upon request of an eligible Indian tribe or tribal organization, reserve a portion of a State's allotment and, upon receipt of the complete application and related submission that meets statutory requirements, grant it directly to the tribe or organization." [(45 C.F.R., sec. 96.40-.48; (1993)].

39. In an April 29, 1994 memorandum for the heads of executive departments and agencies, President Clinton stressed the importance of government-to-government relationships between Federal agencies and Tribes. In this memorandum, the President listed guidelines for executive branch activities to "ensure that the rights of sovereign Tribal governments are fully respected." (59 Fed. Reg. 22951, May 4, 1994.)

The BIA, according to the recently revised ICWA regulations, views its relationship with Tribes as one in which "the Federal government has a government-to-government relationship with the sovereign governments of federally recognized Indian tribes and Alaska native villages as contemplated by Public Law 95-608. Therefore, federal funds for which a tribe is eligible are distributed directly to the tribe by a Federal Finance System." (59 Fed. Reg. 2249, Jan. 13, 1994.)

40. Previous efforts to require a Title XX set aside for Tribes have failed in the Congress.

41. This burden might be somewhat less with Title XX grants because, as block grants, the demands on grantees and Federal agencies are deliberately minimized.

42. This nongovernment organization would need to be culturally appropriate, knowledgeable about Indian child welfare services and Federal grants administration, and willing to be subject to ACF monitoring.

43. *Improving Children's Welfare: Learning from Iowa*. National Conference of State Legislatures, Denver, CO, 1990.

44. The Indian Self Determination and Education Assistance Act Amendments, P.L. 100-472, 1988, Title III - Tribal Self-Governance Demonstration Project.

45. The Indian Employment, Training, and Related Services Demonstration Act (P.L. 102-477). This legislation authorizes the waiver of any regulation, policy, or procedure promulgated by any of the four departments to allow for consolidation of similar programs. The legislation requires the DOI to develop a single report format for project activities and expenditures, and a single system of Federal oversight for the projects.

In addition, P.L. 95-134 Title V allows Insular Areas to consolidate various grants, including Title XX block grants, and formula grants for child welfare services and for child abuse and neglect (45 C.F.R. Sec. 97.12).

Insular areas include the Virgin Islands, Guam, American Samoa, Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands.

46. The ACF has demonstrated its commitment to finding more coherent approaches to improving opportunities for vulnerable children supported by its programs. The ACF Commissioner for Children, Youth and Families, for example, has affirmed the importance of the Federal government "putting the pieces together, because you can't make a difference for families if you are thinking only in narrow and categorical terms." See "ACYF Commissioner *(Olivia Golden)* Speaks Her Mind," *Child Protection Report*, Vol. 20, No. 2, p. 9, January 21, 1994.

47. The State and Tribal child welfare administrators with whom we spoke suggested that State workers could benefit from an endeavor in which State and Tribal representatives collaborated in the development of State ICWA legislation, policy, and procedures, and an ICWA manual for State child welfare agency and court workers. It was also suggested that State child welfare agency and court workers could benefit from ICWA training provided by BIA staff

and/or Indian child welfare experts who were invited by the State to provide this training.

48. See the Family Preservation and Support Act in OBRA 93 (P.L. 103-66, Item 335: (47) Sec. 13712).

49. Agreements between DOI and DHHS have already been formed to implement the Indian Child Protection and Family Violence Prevention Act of 1990, which appears as Title IV of P.L. 101-630; the Indian health Care Amendments of 1990, which appear as Title V of this law; and the Anti-Drug Abuse Act of 1986 (P.L. 99-570).

As part of an ICWA memorandum of agreement, ACF and BIA could plan to exchange information relevant to Indian child welfare services and protections. The Intra-Departmental Council on Native American Affairs, which was recently re-established with a new charter, could serve as an alternative mechanism for sharing information.

50. A proposal to require States to ensure compliance with ICWA protections as part of their IV-B plans was considered in the 103rd Congress first session as part of the draft Family Preservation and Support Act (H.R. 2264); it was dropped from the final legislation for technical reasons. This requirement is still being considered by the Congress as part of S. 1886, which was introduced on November 17, 1993.

State and Tribal child welfare administrators suggested that should such State ICWA planning be implemented, Tribes should be given an opportunity to indicate their level of satisfaction with the State plans. This would encourage State-Tribal communication and might better ensure State compliance with ICWA.

State and Tribal child welfare administrators and Native American child welfare experts also suggested that making Federal funding contingent upon demonstrated State compliance with ICWA would greatly increase the likelihood that States would comply with the law. Accordingly, ACF could seek to make State compliance with ICWA a requirement for some ACF child welfare funding, such as the Title IV-B Subpart 1 base or Section 427 incentive funding.

51. The ACF could build on the efforts of States--such as Washington--that have already developed and tested instruments to assess State compliance with ICWA requirements.

52. *Overview of Entitlement Programs, 1992 Green Book*. Committee on Ways and Means, U.S. House of Representatives, 102-44, May 15, 1992, pp. 828 - 886.

53. In 1990 dollars, funding decreased from $5,790 million in 1977 to $2,565 million in 1992. In nominal dollars, funding increased from $2,796 million to $2,800 million over this same period. Ibid. pp. 829 - 830.

54. The other four goals are: 1) achieving or maintaining economic self-support; 2) achieving or maintaining self-sufficiency; 3) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and 4) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions. Ibid. p. 832.

55. Federal reimbursement for State foster care assistance payments and State adoption assistance payments are made as an open-ended match at the State's Medicaid rate (which averages about 54 percent nationally). State placement services and administrative costs related to both foster care and adoption are reimbursed as an open-ended Federal match at a rate of 50 percent. Training expenses are reimbursed as an open-ended match at a rate of 75 percent. Nonrecurring adoption expenses are reimbursed as an open-ended Federal match at 50 percent. Ibid. p. 846.

56. The Snyder Act also authorizes funds to support payments to members of federally recognized Tribes for general welfare assistance, participation in the Tribal Work Experience Program, and non-medical institutional or custodial care of adults. Miscellaneous assistance payments authorized by the Act include burial assistance and emergency assistance to prevent hardship caused by fire, flood, or acts of nature.

Senate Committee on Indian Affairs
Hearing on Direct Federal Funding
April 5, 1995
Prepared by Ida Nadeau, JTPA Director
United Tribes of KS & SE Nebraska, Inc

United Tribes of Kansas and Southeast Nebraska, Inc. is a non-profit corporation chartered in the State of Kansas since July 25, 1972; it is also a consortium of the Sac and Fox Tribe of Missouri and the Iowa Tribe of Kansas and Nebraska. United Tribes has been a Grantee of the Department of Labor since the early 1970's. Having been the director of employment and training programs for United Tribes for nearly 20 years and watching programs change from Manpower Development Training Act to the Comprehensive Employment and Training Act and currently to the Job Training Partnership Act I have a great interest in the current debates and bills that are being considered that could possibly change the Grantee relationship that exists with the Department of Labor today. Because of what these changes could bring about and the effect that they would have on Indian and Native American people, I would like to share with you the reasons why we are able to operate a successful employment and training program.

To determine the success or failure of a program you must take a look at the end result and make the following assessments: are the goals of the program being met and are funds being spent in a cost effective manner within the scope of the intent of the legislation that allows the program to exist. The primary goal of United Tribes JTPA program is to provide unemployed or economically disadvantaged Indians and Native Americans with whatever skills they need to be placed into unsubsidized employment at a wage that allows them to provide for their families, while utilizing other resources available to keep costs at a minimum level. United Tribes JTPA program, during the last funding year, had 68.7% of clients who terminated the program placed into unsubsidized employment and an additional 25.8% being school drop-outs who returned to full-time school, clients who entered four year college programs to further their education or clients who joined some branch of the military. This was accomplished with an average cost per participant of $3,150. Why is this program so successful? The answer lies in the very legislation that authorizes this program, Title IV, Section 401 of the Job Training Partnership Act, (b) (3) "such programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development as determined by representatives of the communities and groups served by this section". The ability to determine, at the local level, the employment and training needs of our communities is essential to the reduction of poverty and unemployment within the Indian community and to keep these consistent with the Indian communities goals and lifestyles. We are able to complete an assessment of individual clients that answers the question, what needs to be done and what other resources are available to make this person employable in a job that allows them to be independent of all social programs?

Our goal is simple, to eliminate unemployment among the Indian community that we serve. The steps to accomplish this goal are somewhat more complex. I would like to share with you two examples in the day to day operation of the JTPA program. Client #1, male, age 28, married with 2 children, with a high school education was laid off over a year ago as a painter at an implement manufactunng company in another state due to a plant shutdown. After exhausting unemployment benefits was forced to apply for welfare benefits to provide for his family. He looked for work everyday, read the want ads, visited the local employment office and put in numerous applications but was unable to find employment. The families lifestyle deteriorates rapidly. Knowing he must have transportation if a job becomes available, he keeps the family car in good repair but must cancel his newspaper subscription and have his telephone removed. He relocates his family to Kansas because a cousin tells him that he thinks he can find work here and to be closer to relatives that may be able to help them through this crisis. When he contacts our office he has already applied and been accepted for employment as a painter in a company that manufactures airline support equipment. He has two immediate

problems, needs to have a physical and a pair of steel toed boots before he can begin work. Our JTPA program was able to make arrangements for both of these things and at the end of 60 days was found to still be employed and no longer receiving welfare benefits at a cost to our program of less than $200. Client #2, male, age 47, divorced, high school dropout whose reading and math skills are at a 5th grade level. His only income is from odd jobs such as lawn mowing in the summer and scooping snow in the winter. He has had a variety of jobs over the past 20 years, but each one ends the same, frustrated by his inability to read instructions and too embarrassed to admit this to his employers, he is unable to control his anger and walks off of the job. Since his only transportation is a bicycle that he uses to commute the 5 miles to our office, an immediate goal is to improve his reading ability to enable him to obtain a drivers license. The tribe has provided him with employment, using his current skills of lawn mowing and snow removal and more importantly are in the process of teaching him proper work habits such as how to communicate with your supervisor instead of walking away and quitting. Of course, his long range goals are to be trained in a skill that will enable him to be employed in a position that not only will monetarily reward him but also improve his self image and enable him to become self sufficient. These two clients may not reflect the average client that we serve, but they do emphasize the wide variety of problems that we encounter and help illustrate why it is so vital that we maintain the flexibility that we have as a direct Federal funded program.

State programs often operate by computerized modules that identify who can best be served by their programs, ie: age groups, education levels and labor market demand in metropolitan areas. These modules have little to do with the population and labor market demand on the reservations and in the rural areas and would limit our ability to determine the types of employment and training activities that we find necessary to help people escape from long term unemployment and dependence on social welfare programs. United Tribes Job Training Program serves economically disadvantaged and /or unemployed indians and Native Americans in 83 counties in the State of Kansas, 30 counties in the State of Missouri and 1 county in Nebraska. Our multi-state structure makes it imperative that we maintain our government-to-government relationship with the Department of Labor.

United Tribes JTPA program has not only had a positive effect on the lives of Indian and Native Americans within our service area, it has played an intregal part in the success of the individual tribes that are member of the consortium. The Sac and Fox of Missouri tribe currently has 50% of their employees that were trained with JTPA funds, saving them thousands of dollars in training costs. The Iowa Tribe of Kansas and Nebraska which operates a gas station, restaurant, grain elevator and farming operation estimates that nearly 85% of their employees were participants of the JTPA program prior to their employment with the Tribe. Their participation in the JTPA program has ranged from literacy tutoring, GED classes to receive their high school diploma to skill training from a vocational school or on-the-job training where they learn while working.

After 20 years of working with economically disadvantaged and/or unemployed clients there is one thing that has become increasingly clear to me; if we are going to lower the unemployment rate of Indian and Native American people and allow them to become self sufficient and productive members of the community we must not look at them as individuals, but look at the total family. Many times the unemployed think that all of their problems would be solved if they could just find a job. To be self sufficient, you must not only find a job, but be able to keep a job and that is difficult to do when there are a variety of problems within the family unit such as alcoholism, illness, or children experimenting with drugs. Currently, Tribes are able to receive some direct Federal funds but other services are provided by the States. Tribal governments and Native American controlled organizations must receive an equitable share of Federal funds through direct funding along with reductions in regulatory burdens to lower administrative costs to insure that tribal innovation and flexible authority is maintained as we strive to improve the quality of life for Indian and Native American people.

NATIONAL INDIAN CHILD CARE ASSOCIATION
PRESENTATION TO THE
SENATE INDIAN AFFAIRS COMMITTEE
BY
SCOTT A. JOHNSON
MUSCOGEE (CREEK) NATION
FEBRUARY 27, 1995

I appreciate the opportunity to address the committee today. We are at a critical juncture in our Nations history. Over the past three decades we have seen an erosion of familial structures, morals, and values that spans all cultures. Today, more than ever before, our families and specifically the children in this Nation are relying on us to create a system in which they may avail themselves of the various opportunities that may arise in order to facilitate a more prosperous future.

We all applaud the efforts of our representatives to reform the failing welfare system. However, we can ill afford to engage in ethnocentric activities that deny even basic services to our children and families. I am here today to speak to you on an issue that affects millions of our children and families, businesses and local governments and that issue is child care.

Indian tribes engage in activities with the Federal Government in a Nation to Nation relationship. Indian Tribes are individual sovereign nations that have entered into a trust relationship with the United States. This trust relationship assures Tribes that the United States will assist us in providing services to our people in fulfillment of this relationship.

Historically, we have seen Tribes underfunded in all areas in proportion to State funding based on diverse funding formulas. Tribes have seen States have access to additional funding that Tribes are not eligible for under current regulations. Currently, Tribes receive funding to provide child care services through the Child Care Development Block Grant only. Whereas, the States have access to additional funding such as at-risk child care, transitional child care and AFDC child care programs.

This inability to access additional child care funding impairs the ability of Tribes to enhance and expand current Tribal child care programs. Through the Child Care Development Block Grant, Tribes have created administrative structures capable of providing single service delivery of these additional programs.

Many of our families strive to provide for their individual needs. Due to circumstance, many of these families reside in low socioeconomic areas with income equivalent to or below poverty level. many of these families have at times accessed the welfare system for various services. However, a fine line must be delineated between welfare assistance and welfare dependence. Programs such as transitional child care, at-risk child care, and

AFDC child care, provide temporary child care assistance in order to prevent low income families from becoming welfare dependent.

By allowing Tribes access to the additional funding provided for by at-risk child care, transitional child care, and AFDC child care programs and to engage in direct service administration, Tribal programs will possess the necessary resources to enhance and expand culturally sensitive services to the various Tribal populations.

As I alluded to earlier, Tribes have been historically underfunded in the area of child care services and have been subjected to inequivalent federal regulations in the administration of these services. Currently, Child Care Development Block Grant funds allocated to States are re-allocated to other States when a State fails to carry out the State plan in the period for which the allotment was made.

Tribes are not afforded the privilege of re-allocating unused funds to other Tribes. Currently, when a Tribe does not expend their Federal allotment in the time allotted, these monies are returned to the Federal Government. An example of this is the Muscogee (Creek) Nation Title-IV-B program. In fiscal year 1994, our allotment was received six months into the fiscal year and left only six months to expend the full fiscal year allotment. If these funds had not been expended, the monies would have been returned to the Federal Government instead of allocated to another Tribe for similar purposes.

By regulation, Tribes are allotted up to 3% of the total appropriation for child care as a set aside. Over the past few years this percentage has averaged approximately 2.6 percent. With the increase in the number of Tribal Governments participating in the Child Care Development Block Grant, these funds have not been increased proportionately. Hence, Tribal Governments are incurring decreases in their allotments with each addition of a Tribal grantee.

To address this issue we would encourage legislation that takes unexpended Child Care Development Block Grant funds allotted to Tribal grantees, be re-allocated to other Tribes in order to be utilized to the benefit of the children. Additionally, the Tribal set aside of 3% should be increased proportionately to the number of new Tribal grantees in order to maintain current funding levels to Tribes already participating in the Child Care Development Block Grant.

Currently, deliberations are underway concerning the re-authorization of the Child Care Development Block Grant. It is essential that this critical entitlement be reauthorized. Tribes are sovereign Nations in a trust relationship with the United States Government. Direct funding to Tribes is imperative to provide services in several areas to include child care services.

The funding from the Child Care Development Block Grant increases the availability, affordability, and accessibility of child care services to low income Indian families. The eligibility requirements for these families are based on the concept of assisting families who are helping themselves become self-sufficient. The Child Care Development Block Grant is for families who are working, attending vocational training or engaging in educational pursuits.

With the current emphasis on AFDC programs requiring employment for recipients, the number of families requiring assistance under the auspices of the Child Care Development Block Grant will increase. Again, we must delineate between welfare assistance and welfare dependence. As these families strive for self-sufficiency, we must remind ourselves that one of the purposes of government is to assist the citizens of this Nation in their pursuit of happiness.

Therefore, it is an imperative and our responsibility to ensure that the Child Care Development Block Grant is reauthorized and funded at current or higher levels and that direct allotment to Tribes be maintained.

As government employees we must establish systems and structures that can best assist our families in their endeavors. One of the obstacles to creating the most efficient system possible is the limit on administrative costs. Currently, rules and regulations limit the amount of funding that can be used for administrative costs. Existing funding levels restrict growth and development. Program staff are tasked with performing multiple functions in order to facilitate an efficient system of service delivery of direct child care services.

Tribal programs are unable to avail themselves of additional funding in order to expand child care services. With the restrictions on administrative cost, Tribes are unable to establish an organizational structure that provides for adequate staffing and division of position functions that would create a more efficient child care service delivery system.

In addition to the restrictions on administrative costs, allowable indirect cost rates which are retrieved from these administrative costs are inconsistent with Indirect Cost rates negotiated between sovereign nations and the Federal Government. Current rates have been established at 11.25% for non-exempt Tribes, which are Tribes receiving more than $225,000 and 36.25% for exempt Tribes. The Tribal government is then placed in a position to recover Indirect Cost and significantly reduce services or forfeit the difference incurred between the regulatory Indirect Cost rate and the negotiated Indirect Cost rate.

For example, the Muscogee (Creek) Nation has a negotiated Indirect Cost rate of 25% with the Federal Government. We are a non-exempt Tribe and therefore, only eligible to recover 11.25% of

the Indirect Cost rate for the Child Care Development Block Grant program. So that services are not decreased the Tribe must forfeit 13.75% of the Indirect Cost that has been negotiated with the Federal Government.

In order to create the most efficient child care delivery system possible, it is essential that an increase in administrative cost be appropriated and the cost limitations for all Tribal grantees removed.

A critical issue that is currently effecting Tribes is the decrease in proportionate funding to Tribes participating in the Child Care Development Block Grant. The number of Tribes participating in the CCDBG program has significantly increased since 1990. Appropriations for all grantees has increased over recent years, however, Tribes are allotted up to 3% of the entire appropriation. The increase in the total appropriation has not been proportional to the increase in the number of Tribal grantees participating in the Child Care Development Block Grant program. This disproportionate funding increase has caused the allotment per child for Tribal children to decrease.

Currently, 515 federally recognized Tribes are potentially eligible to participate in the Child Care Development Block Grant program. In addition, the population of Native Americans in this country is increasing rapidly. The largest growing cohort is that of individuals of child bearing age. This rapid increase results in a significant growth in the number of children accessing the services provided by the Child Care Development Block Grant program. This growth has placed a greater demand on Tribal child care programs to provide available, affordable, quality child care services while maintaining cultural sensitivity.

To offset the increasing demand for Tribal child care services and the decrease in funding for Tribal grantees, Tribes must reduce funding in all components of the Block Grant program to include direct services to Indian families.

A current system that has been established, though underfunded is the Tribal base amount which grantees receive in order to develop and enhance the administrative component of the CCDBG program. The Tribal base amount supplements administrative costs for large non-exempt tribal grantees which have limited access to child care funding and must meet regulatory requirements for administrative costs. The Tribal base amount also ensures that small exempt Tribes have the administrative capabilities to develop, operate and maintain CCDBG programs.

Tribal CCDBG programs engage in numerous activities that provide safe environments, efficient administration, regulatory compliance, and public awareness. These activities include provider training, health and safety inspections, licensing and monitoring activities, administration, consumer awareness and resource and referral programs.

As I stated earlier, Tribes are not afforded the opportunity to access additional funding for child care services other than the CCDBG and Head Start programs. The Tribal base amount is essential for the continuation of Tribal programs in the most efficient and effective manner possible. However, this funding level must remain at current levels in order for Tribal programs to continue to function at their current capacity. With the increased demand for Tribal child care services the Tribal Base Amount should be funded at an increased level.

Another obstacle to providing efficient child care services to the Tribal population is the legal definition of Relative Care as provided in the CCDBG rules and regulations. This definition states " a child care provider that is 18 years of age or older who provides child care services only to eligible children who are by affinity or by consanguinity, or by other court decree, the grandchild, niece or nephew of such provider, if such provider is registered and complies with any State requirements that govern child care provided by the relative involved."

This definition of Relative Care is culturally insensitive and inherently not applicable to Tribal populations. Tribal definitions of Relative Care are as variable as the number of Tribes in the United States. Each Tribe possesses their own system whether it be a paternal or matrilineal society, a clan or band system, communal or separatist living conditions or extended family to include siblings, great grandparents, nieces and nephews.

The current definition of relative restricts Tribal grantees access to a greater number of eligible Indian providers, thereby prohibiting Tribal members from participating in a child care program that is sensitive to the Tribal culture.

Only Tribes can define what the term "relative" means in relation to their specific Tribal culture. Tribal grantees should be allowed the flexibility in deciding the unique and specific cultural definition of "relative" that pertains to each Indian Tribal population.

At this current point in time, one of the major deficits of the CCDBG program, is the acquisition of suitable facilities in which to operate child care programs, before and after school care programs, and early childhood development programs. Currently regulations allow only minor renovations to existing structures. This creates a hardship on Tribal governments when the location of large Tribal populations is reviewed. The density of these populations is located many times in rural areas with limited access which are isolated from mainstream child care facilities.

Tribal owned structures are few and those that are available are inadequate or require extensive renovation. This inability to access a mainstream child care facility increases the need for relative providers which is currently hampered by the current definition of "relative" as I mentioned earlier.

For Tribal grantees to best serve their population, Tribes must locate land or an existing structure, purchase it, and either build or renovate the facility. However, Tribes are not currently allowed to utilize funds for the acquisition or improvement of land, the purchase, construction, or permanent renovation of any building or facility.

This impairment of services under the CCDBG can be diminished by allowing Tribes to conduct major renovation, purchase and or construct new facilities for CCDBG programs.

The purpose of the CCDBG was not solely that of offering child care services to Tribes but also to assist Tribes in the development of Indian Country. The Tribes have been incurring decrease after decrease since 1991. Since that time, the funding level of the CCDBG has risen only 4.7 million dollars. Initially this appears substantial until compared with the fact that 66 new Tribes have entered the CCDBG program. The number of Tribes participating has risen from 160 to 226. Among these Tribes there exist one which receives over a million dollars in funding alone due to their population. This decreases the available amount of funding for other Tribes due to the non proportional increase in overall funding.

The CCDBG program has assisted in the development of Indian Country. Economic development has been expanded in these areas with the employment of child care providers. Currently, Tribes employ up to 800 providers and serve up to 1500 clients per Tribe. To fail to reauthorize this critical program will mean the unemployment of 800 people per Tribe who would need to access welfare services. This seems contrary to the purpose of welfare reform.

We can see the critical importance of this service when we review the cost of child care. Families with low income salaries can spend 51% of their income on child care services alone. This is because to fund a child in a child care service at the lowest rate in the Nation would still cost $3120 per child per year. For the young single mother who works for minimum wage and is trying to support her child, the cost of child care is out of her reach. A person on minimum wage will gross $170 per week. This person will have 50% or $85 dollars taken out to fund child care services for one child. This perpetuates welfare dependence, not because they live better on welfare, but because welfare does not provide enough supportive services to aid those families trying to exit the welfare system and strive towards self-sufficiency.

For each child that takes $3120 to place in child care for one year, the CCDBG receives only $1400 per child while Head Start programs receive $3300 per child. This drastic underfunding of the Tribes coincides with the inability to create an adequate staffing pattern. In the copy of your agenda, you will note in the key information section that it says that administrative cost currently allows Tribes to hire from 0-11 individuals. This simply means

that the largest Tribe in the Nation employs 11 people while most employ 2 to 3. This underfunding leads to waiting list which 48% of Tribes currently have and 73% of Tribes are expecting to experience in a very short time frame.

In short ladies and gentlemen, the CCDBG was established to address a need experienced by a vast majority of the families in this country. Ladies and gentlemen, the need is still there and it is critical that the current participants in the CCDBG program be allowed to accomplish their mission of providing quality child care services to those in need.

In conclusion, we must realize that although welfare reform is needed, the purpose of welfare reform is not to deny basic services to those in need. Welfare reform should address administrative deficiencies and not result in an increase in the number of people accessing the welfare system. By failing to reauthorize the CCDBG, the end result will be an increased demand on the current welfare system. With the proposed welfare legislation many families and thei. children will be left to fend for themselves.

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TESTIMONY OF

THE NATIONAL INDIAN CHILD WELFARE ASSOCIATION

REGARDING PROVIDING DIRECT FUNDING
THROUGH BLOCK GRANTS TO TRIBES

SUBMITTED TO THE

SENATE COMMITTEE ON INDIAN AFFAIRS

APRIL 5, 1995

This testimony is submitted on behalf of the National Indian Child Welfare Association which is based in Portland, Oregon. Our testimony will focus on our view that welfare reform, if properly designed, presents an opportunity to support the healing of Indian Nations -- healing from decades of poverty, substance abuse, and dependence. It could provide an opportunity for tribes to take responsibility for and develop solutions to the most troublesome and persistent problems in Indian communities.

But for tribes to accomplish these goals, they must be given the opportunity to: 1) receive direct funding from federal programs involved in welfare reform, and 2) to be able to have the flexibility to design and administer programs for their own communities.

We have also signed on with several other organizations and tribes in responding in a separate document to questions submitted by Senator McCain.

National Indian Child Welfare Association (NICWA). The National Indian Child Welfare Association provides a broad range of services to tribes, Indian organizations, states and federal agencies, and private social service agencies throughout the United States. These services are not direct client services such as counseling or case management but instead help strengthen the programs that directly serve Indian children and families. NICWA services include: 1) professional training for tribal and urban Indian social service professionals; 2) consultation on social service program development; 3) facilitating child abuse prevention efforts in tribal communities; 4) analysis and dissemination of policy information that impacts Indian children and families; and 5) helping state, federal and private agencies improve the effectiveness of their services to Indian people. Our organization maintains a strong network in Indian country by working closely with the Affiliated Tribes of Northwest Indians and the National Congress of American Indians, as well as having members on the Indian Child Welfare Committees of both organizations.

Providing the Basis for a New Federal/Tribal Partnership. The welfare reform legislation also provides an opportunity for a new partnership between the federal government and tribes. This opportunity is timely because tribes have, thanks to self-determination policies, brought about progress in a number of areas over the last twenty years.

In the area of health care the life expectancy of Indian people has increased by over ten years. Our infant mortality rate has dropped dramatically. We now have more Indian people attending college than ever before, and the tribally-controlled colleges have enviable records of college completion and job

attainment. In social services tribes have better trained and educated social workers proportionately than state and county agencies. In Head Start we now have 25 years of experience in over 500 programs and are graduating thousands of children each year. In child welfare, tribal services place children less often that state agencies, for shorter periods of time, and in less restrictive settings. In the area of substance abuse, we now have a strong sobriety movement, and while rates of alcoholism are high in Indian country, it is significant that we at the same time have the highest rate of alcohol abstinence of any group in the nation. Tribes have also experienced advances in areas including housing, libraries, museums, and economic development. The experiences of tribal governments in operating BIA and IHS-funded programs under self-determination contracts and grants and, more recently, under self-governance agreements, would serve tribes well in taking over the administration of the many programs included in welfare reform legislation.

Why do we site these areas of advancement? Because each case represents the key principles needed in welfare reform from a tribal point of view. Those principles are: 1) tribal control, 2) access to resources, and 3) responsibility. People do not solve problems for which they are not responsible. These advances occurred because tribes have become responsible for the solutions to difficult problems.

It must also be clear that tribes taking responsibility for solving their own problems does not mean that there is no federal role. The federal role should be one which of necessity transcends the geographic bounds of a tribe or a state -- broad-based research, data gathering, information exchange, technical assistance, and the protection of rights. Greatest of these is the protection of tribal rights, notably under the Indian Child Welfare Act.

Welfare Reform as an Opportunity. We view welfare reform as an opportunity for tribal governments to, at long last, enable their members to become permanently self-sufficient. As you know, a wide array of federally-funded programs -- including child protection, child care, nutrition, job training, and cash assistance -- are under consideration as part of welfare reform legislation. Tribes currently receive very little direct funding from these programs. And those few programs from which funds flow directly to some tribes for the administration of their own programs (JOBS, Title IV-B Child Welfare, Title IV-B Family Preservation and Support, and Family Violence and Prevention Act) would, under the House bill, be taken away and given to states. Tribes, like states, need access to resources and also need the flexibility to combine and coordinate those resources within the tribal community, and, when appropriate, with state programs. Structured properly, welfare reform would allow tribal governments a first real opportunity to help their members break the bonds of poverty.

Tribal Welfare Reform Proposal. The Senate welfare reform bill should contain the following principles with regard to Indian and Alaska Native tribes:

• ***3% allocation of appropriated funds to tribal governments.*** Direct funding to tribes would be consistent with many existing statutes and with Administration policies of both parties. Tribal governments already administer myriad services for their members, and are able to administer welfare reform programs. Finally, the need in Indian country, as evidenced by indicators including high levels of unemployment, poverty, substance abuse, and out-of-home placement of children.

• ***3% allocation of appropriated funds from the Title XX Social Services Block Grant to tribal governments.*** The Title XX Social Services Block Grant is not part of the House-passed welfare reform bill, although the House bill would allow states to transfer funds from other block grants into the Title XX program. We ask that the text of S. 285, introduced by Senators McCain, Inouye and others, be incorporated into the Senate's welfare reform bill.

• ***tribes should develop programs consistent with the goals of the Act, taking into account their unique circumstances.*** Tribes, like states, recognize that community-based solutions are the key to effective welfare reform. Of critical importance is that there are many cultural factors in tribal communities which cannot be appropriately accommodated by state or other outside entities.

• ***tribal and state plans, should, when appropriate, coordinate on the provision of welfare reform services.*** This is a practical consideration, meant to avoid unnecessary duplication of services and provide for coordination of services.

• ***for any tribe not immediately able or desiring to administer a full range of welfare-reform programs, it should have the option of entering into an agreement with the state or other entity to administer services for its members.***

The basis for providing these opportunities to tribes is discussed in further detail below.

Tribes as Governments and as Service Providers.

Tribal sovereignty predates that of the United States, and except for specific limitations imposed by Congress, tribal governments possess the full range of government authority that is inherent in the concept of sovereignty. Tribal governments enjoy a Constitutional relationship with the Federal government, and their legal status as governments is also reflected in hundreds of

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treaties with the United States government, in court decisions and in statutes. Tribal governments are not part of state governments, nor are they subsets of them -- they are distinct and separate from state governments.

Tribal governments serve their communities much in the same way that other governments serve their members. They elect leaders who work with their communities to identify priorities and goals and problem-solving strategies that reflect their communities' traditions, customs, values, and needs. Tribal governments administer a broad array of services for their members including job training, social, health, education, and child care services. They also enact and enforce tribal laws and regulations, engage in planning and economic development, natural resources planning, and have their own court systems.

Tribal governments are increasingly contracting, under the authority of the Indian Self-Determination and Education Assistance Act (P.L. 93-638) to administer programs formerly run by the Bureau of Indian Affairs and the Indian Health Service. In Alaska, for instance, virtually all of the BIA and IHS program are now tribally administered through either P.L.93-638 contracts or Self-Governance compacts.

A 1988 study commissioned by the Departments of Health and Human Services and Interior, "*Indian Child Welfare: A Status Report*", concluded that tribally-administered child welfare programs were, in many ways, outperforming state systems. These community-based services were found to be more effective than state services,despite unstable and inadequate competitive grant funding. As evidence of this, the study found that Indian children placed by state and BIA agencies are more often placed outside of their homes, in more restrictive placements, and stay in substitute care longer than Caucasian children.

Consistency with Administration and Congressional Policy.

-- *Administration Policy.* The provision of direct funding to tribal governments under welfare reform legislation would be consistent with many current federal statutes, such as the 1% allocation to tribes under the Child Care and Development Block Grant. It is also consistent with the official Indian Policy statements of former Presidents Nixon, Reagan, and Bush, and of President Clinton. All pledge a continued government-to-government relationship with tribes. President Nixon, in his Indian policy statement delivered to Congress on July 8, 1970 said that increased tribal control over their own affairs, which he was advocating, did not mean absolving of Federal responsibilities:

> We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal

control without being cut off from Federal concern and Federal support.

The proposal for increased control by tribes over their affairs outlined in President Nixon's policy statement was later enacted as the landmark Indian Self-Determination and Education Assistance Act, an Act which has allowed tribes to contract to with the Bureau of Indian Affairs and the Indian Health Service to administer programs formerly administered by those federal agencies.

President Reagan, in his Indian policy statement of January 24, 1983, declared:

> Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination.
>
> In support of our policy, we shall continue to fulfill the federal trust responsibility for the physical and financial resources we hold in trust for the tribes and their members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards.

The Indian policy issued by President Bush on June 17, 1991, declared that the Reagan policy would be the cornerstone of the Bush-Quayle policy regarding Indian tribes, and stated:

> This government-to-government relationship is the result of sovereign and independent tribal governments being incorporated into the fabric of our Nation. Of Indian tribes becoming what our courts have come to refer to as quasi-sovereign domestic dependent nations. Over the years the relationship has flourished, grown, and evolved into a vibrant partnership in which over 500 tribal governments stand should to shoulder with the other governmental units that form our Republic. I take pride in acknowledging and reaffirming the existence and durability of our unique government-to-government relationship.

President Clinton has continued his predecessors' commitment to tribal self-determination, and in addressing tribal leaders on April 29, 1994 issued a Memorandum for the heads of all executive departments and agencies which instructed them to ensure that their department or agency is operating in a government-to-government manner with tribal governments. The Memorandum requires that each department and agency consult with tribal governments prior to taking action that will affect them, that federal activities be evaluated regarding their impact on tribes, and that steps be taken to remove procedural impediments which inhibit working directly and effectively with tribes on matters which affect trust property and/or governmental rights of tribes.

-- *Congressional Policy.* Congress, for its part, has explicitly provided in many federal programs statutory funding allocations for tribes and tribal organizations. It is commonplace for relatively recent legislation to include specific

funding provisions for tribes. It is, in fact, mainly the older social service and other domestic programs where tribal governments have not been provided direct access to federal funding. Examples of programs that have tribal funding provisions are:

Child Care and Development Block Grant
Title IV-B Family Preservation and Support Services
Title IV-B Child Welfare Services
Family Violence and Prevention Services
JOBS (Job Opportunities and Basic Skills Training)
Job Training Partnership Act
Head Start
Vocational Rehabilitation Act
Vocational Education Act
Library Services and Construction Act
Clean Water Act
Safe Water Drinking Act
Even Start Program
Drug Free Schools Act
HUD housing construction and modernization programs
Community Development Block Grant

Needs of Tribal Communities:

Overall, tribal communities experience some of the highest levels of social problems of any group in the United States. Poverty, unemployment, alcohol and substance abuse, and out-of-home placement of children occur at rates that are well above that of the general population. For example:

• There are over 442,000 Indian families in the U.S. with over a quarter of these (27%) headed by women with no husband present (1990 Census).

• Over 51% of Indian people residing on reservations and trust lands were living below the poverty line (1990 Census).

• The average unemployment rate for Indian reservations and trust lands in the U.S. is 45% (Bureau of Indian Affairs Labor Force Statistics, 1991).

• Indian children have a 39.8% chance of being raised in poverty. Some examples of state Indian child poverty rates are: South Dakota (61.3%), North Dakota (58.3%), Nebraska (57%), Minnesota (54.9%), Montana (51.4%), Arizona (53.1%), New Mexico (50%), Wyoming (49%), Utah (47.3%), Idaho (40.5%), Washington (37.7%), Oklahoma (34.9%), Oregon (32.3%) - Children's Defense Fund analysis of 1990 Census.

• More than 20% of Indian housing units on reservations and trust lands lack complete plumbing facilities (1990 Census).

• Indian children are placed out-of-home at a rate that is 3.6 times greater than that of the general population - Department of Health and Human Services and Department of Interior report "*Indian Child Welfare: A Status Report*" 1988.

While tribes struggle to eliminate these barriers to self-sufficiency, Indian children and families are increasingly at risk of falling through the cracks of a severely fragmented and strained service delivery system.

Limited Availability of Resources for Tribal Governments.

-- *Federal Resources*. Funding for welfare-related services for Indian communities is woefully inadequate. The Bureau of Indian Affairs budget, which provides the vast majority of welfare-related funding for Indian people, in fiscal year 1995 contained only $105 million for this purpose. In the Indian Health Services' FY1996 budget justification, they estimated that the IHS social services on reservations are funded at only 21% of need (FY1996 Indian Health Service Budget Justification, pg. IHS-48).

It is clear in fact, that the very limited amounts of BIA and IHS social service funding are not intended to provide ongoing support for tribal social services. Social services funding through the IHS is primarily for substance abuse treatment programs, and funding through the BIA is primarily designated for last resort cash assistance and one-time emergency situations. Faced with extremely limited funding that lacks flexibility in many areas, tribes have had little opportunity to develop comprehensive welfare reform strategies through BIA and IHS programs.

Access to other sources of funding that promote self-sufficiency in Indian families has also been extremely limited. A picture of the current situation for tribal access to federal social service and child welfare funds was provided in a report by the HHS Office of Inspector General, "*Opportunities for Administration for Children and Families to Improve Child Welfare Services and Protections for Native American Children*", August 1994. The report revealed that tribes receive little benefit or funding from federal Social Security Act programs, specifically, Title IV-B Child Welfare Services and Family Preservation and Support Services, Title IV-E Foster Care and Adoption Assistance, and the Title XX Social Services Block Grant monies. While tribes receive a small amount of direct funding under both the IV-B programs (less than $1.5 million combined), there is no funding available to tribes under the the much larger Title IV-E and Title XX programs. Title XX and title IV-E authorizing statutes provide state allocations of funds, but not tribal allocations, even

through state allocations take into account the number of Indian people on reservations in the state.

In order for tribes to receive funding under these programs they have had to rely on states to share a portion of their allocation. This option has been available in only a handful of states and in amounts that are extremely small. Not surprisingly, the above-mentioned Office of Inspector General study -- in listing options for improving service to tribes -- *stated that the surest way to guarantee that Indian people receive benefits from these Social Security Act programs is to amend the authorizing statutes to provide direct allocations to tribes.*

-- *State Resources*. Indian people accessing state-administered services has been problematic as well. Any number of reasons can limit the use of state services for Indian people. In some cases, limited state budgets have forced states to target services where they feel they are most needed, and with regard to welfare-related services this has meant targeting primarily urban areas. In western states, where the majority of tribes are located, you see tribal communities being literally hundreds of miles from many of the state services that families and children need. A family that has need of child care, job training or education may be expected to travel great distances on a regular basis to remain eligible for state services. Considering the relative lack of income of many of these families and a lack of public transportation in many rural areas, geographic issues can ba a major obstacle in becoming self-sufficient.

In other cases language differences and cultural differences are significant barriers to use of state services.

Complex jurisdictional issues between tribes and states certainly contribute to states not wanting to locate community-based services on Indian reservations or trust lands. Because tribal lands in are most cases exempt from state control, states resist passing through funding to tribes or to placing services and staff where they cannot retain power. And many states simply feel that services for Indian people is a federal trust responsibility, and, as such, funding should be provided directly from the federal government to tribal governments for these programs.

-- *Tribal Resources*. The lack of tribal resources is certainly a contributing factor to the numbers of Indian and Alaska Native people who are receiving public assistance. States, like tribes, depend on federal resources to supplement their budgets and thus provide needed services for their members. But while states annually receive funding from major federal programs such as AFDC, tribes an governmental entities have not been given access to these critical resources. Tribes are also denied the critical resources of the Title IV-E and Title XX Social Security Act programs.

In terms of revenue bases for tribal governments, tribes have had little to work with in trying to stimulate their communities economically. In recent years some tribes have turned to gaming as a revenue sources -- but those tribes who make substantial amounts of money from gaming are the exception, not the rule.

Tribes -- after entering into treaties with the federal government which supposedly granted them ongoing financial resources and support from the Federal government in return for tribes turning over much of their most productive lands and resources -- found that their land bases were then further reduced through various government schemes and inattention. Even today tribes find that government-controlled leases that are contrary to tribal interests, that access to credit is extremely difficult, that the ability to raise revenue through taxation is limited, and that the agricultural quality of the land for many tribes is poor. The Federal government has not exercised its fiduciary responsibility toward Indian tribes.

However, there are examples of hope and success when even modest opportunities for meaningful reform have been available. While our organization has not been directly involved in these particular efforts, below are a few successes that have come to our attention and which embody the capacity and desire by tribes to design and operate programs to help people become self sufficient.

-- *Job Opportunities and Basic Skills (JOBS) program*. The JOBS program is working for those tribes fortunate enough to have access to this program. When JOBS was enacted in 1988 as part of the Family Support Act, it provided authority for tribes to receive funding directly from the federal government and to administer this program. Implementing regulations provided that only those tribes who applied for the program within the first six months of enactment would be allowed in the program. As a result 77 tribal governments, inter-tribal consortia and Native organizations operate JOBS programs -- the current appropriation is approximately $8 million. In FY1993, 5000 adult Indian and Alaska Native AFDC recipients were enrolled in the tribal JOBS programs and 2,000 tribal JOBS participants were placed in employment in FY1993. This is a remarkable result considering the 45% unemployment rate in Indian country. We would also point out that the Clinton welfare reform bill from last Congress would have increased funding for the tribal JOBS program and opened up the program to all Indian tribes, and we certainly would support inclusion of such provisions in the Senate welfare reform bill.

-- *Tribal Job Training/Services Consolidation*. Public Law 102-477 authorized a limited number of tribes to integrate employment, training and related services monies from various federal program under a single plan, a single budget and a single reporting system. Programs included in this consolidation include

BIA job training, Job Training Partnership Act, and the JOBS program and services including child care. The 10 tribes who are operating the consolidated job training/services programs are enthusiastic about the program, and several have testified before Congress this year on the program. Key benefits are lessened paperwork, more flexibility, and more resources available for services. P.L. 102-477 was designed specifically for tribes, and it would be instructive to study its design if you are considering program consolidation as an aspect of welfare reform legislation.

-- *EARN Program*. In 1988 the BIA initiated, on a pilot basis, the Employment Assistance Readiness Net Program (EARN), and provided $6 million over a period of three years for the development and implementation of tribally designed social service programs, the focus of which was to reduce the need for General Assistance (the BIA's last resort cash assistance program) by helping recipients overcome the barriers to meaningful employment. Six tribally operated and one BIA operated pilot project were funded (Acoma Pueblo in New Mexico, Cherokee in Oklahoma, Lower Brule in South Dakota, Mississippi Choctaw in Mississippi, Salish Kootenai in Montana, Three Affiliated Tribes in North Dakota, and Tohono O'odham in Arizona). While the projects varied, they were all small, tribally designed, multi-service projects serving hard core unemployed people who had voluntarily agreed to participate in the project.

The EARN projects achieved varying degrees of success, with several of the programs being highly successful. Those that provided the most comprehensive range of services had the greatest success in moving employable General Assistance recipients off of welfare and into jobs that were both permanent and paid well enough to allow the individual to meet his or her needs without resorting to public assistance programs.

Unfortunately, the BIA did not request funding to expand the EARN pilot project program, and even though tribes and Indian organizations recommended that the program be continued and expanded, it ended. We commend to your attention the evaluation reports of the EARN demonstration programs prepared in 1990 by the Sunburst Corporation of Seattle, Washington.

Maintaining the Authority of the Indian Child Welfare Act. A concern of many tribes is the possible weakening of the Indian Child Welfare Act. We note that the House-passed welfare reform bill contains a provision which would repeal the Multiethnic Placement Act and replace it with provisions that will push state and private agencies toward placing children without regard to ethnicity. Our experience with the Indian Child Welfare Act has been that many state and private agencies do little to recruit Indian families, resulting in inadequate numbers of Indian foster care and adoptive homes being available. Secondly, many state and private agencies are inconsistent about their identification of

Indian children, resulting in many eligible Indian children not receiving the protections of the Indian Child Welfare Act. We urge this Committee to carefully examine any foster care/adoption placement language in terms of its impact on safeguarding Indian children and providing them with the protections of the Indian Child Welfare Act.

In addition, we understand that H.R. 1448, legislation that seeks to amend the Indian Child Welfare Act and substantially weaken it, has been referred to the the House Native American and Insular Affairs Subcommittee. The purpose of H.R. 1448 appears to be to limit protections under the Indian Child Welfare Act to those children who are enrolled members of an Indian tribe prior to a child custody proceeding taking place. Currently, the Indian Child Welfare Act affords protections to Indian children who are eligible for membership in an Indian tribe during a custody proceeding. Current practice tells us that the enactment of these amendments could eliminate from eligibility 30% or more of the Indian children currently eligible to receive protections under the Indian Child Welfare Act. We urge the Committee to be aware of and oppose any efforts to usurp tribal authority under the Act, and to carefully examine the impact behind any similar bills that might come before the Senate.

The 1981 Block Grant Experience.

Because of the prominent place block grants have in the deliberations on welfare reform legislation, we feel it is important to point out the mistakes made in 1981 with regard to Indian tribes when Congress created several block grants. We hope this will highlight the importance of including tribal governments in any future block grants which may be created.

In 1981, when several federal block grants were created from existing federal programs, little attention was given to funding for tribes in those block grants. **President Reagan, recognizing the disservice done to tribes under the 1981 block grants, proposed in his January 24, 1983 Indian Policy statement, that the laws be amended to provide for direct funding for tribes under federal block grants.**

Subsequently, a February 1984 study commissioned by the Department of Health and Human Services, "*Block Grants and the State-Tribal Relationship*", documented the inequitable treatment given to tribes in the development of several federal block grants created in 1981. The report stated:

> Congress failed to perceive two things: first, in many cases direct funding to tribes would be nominal, and second that states would be placed in the awkward position of being expected to respond to tribal needs through tribal governments, which do not comprise part of the usual state constituency and states cannot require or enforce accountability. (p. 38)

In addition, the report stated:

> While it seems clear that Indians as state citizens are constitutionally entitled to a fair share of state services, this general principle does not address the issue of the delivery system; that is, the degree to which services on the reservation should be delivered by tribal rather than state and municipal governments. This vacuum in federal law and policy is the source of unnecessary complications in the state-tribal relationship when, as here, federal legislation adjusts the delivery system for federally funded services without clearly addressing its impact on the delivery system relationships at the reservation level. (p. 38)

One of the 1981 block grants, the Title XX Social Services Block Grant, provided no funding for tribes, and some other block grants were available to tribes only if a tribe had received funding the previous year from one of the categorical programs included in the block grant. This excluded most tribes. We are pleased that Senators McCain, Inouye and others have responded to the Title XX inequity and introduced S. 285, legislation which would provide for a 3% allocation of Title XX Social Services Block Grant funds to tribes. We urge that the text of S. 285 be included in the Senate's welfare reform bill.

In closing, solving problems comes from the ability to have a vision for a better future and being willing to dream. Welfare reform provides an opportunity to support this vision. Thank you again for holding this very important hearing for Indian Country. We are eager to work with this Committee as welfare reform legislation takes shape in the Senate.

STATEMENT OF ALFRED R. PEMBERTON, CHAIRMAN
LEECH LAKE TRIBAL COUNCIL
FOR OVERSIGHT HEARINGS OF THE COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE
ON BLOCK GRANT PROPOSALS

April 8, 1995

Mr. Chairman, my name is Alfred R. Pemberton. I am chairman of the Leech Lake tribal council of the Leech Lake Band of Chippewa Indians of Minnesota. On behalf of the Leech Lake Band, I appreciate this opportunity to provide written testimony for the hearing record of your committee on block grant proposals and welfare reform.

On behalf of the Council, I would like to express our opposition to H.R. 4, the bill passed by the House to reform the welfare system. Certain of its provisions would greatly hinder services that we are providing to the AFDC recipients living within our service area. The tribal JOBS Program is the first effort by the federal government to assist AFDC participants to get off welfare. It has given us the latitude and funds needed to work with long term AFDC to help participants to develop self esteem and to develop individual goals that each client can attain to become self-sufficient.

If these funds are taken back by creation of grants to states in block grants, Indian people will again suffer as Social Security Administration cannot provide the kinds of services our own Indian programs can provide.

We have found that it takes people who care to get [illegible] people with [illegible] to help them overcome the [illegible] barriers to overcome and individual problems to solve.

A couple of these problems are no dependable transportation, no [illegible] income in the home, no economic status to work or school. Welfare will not allow them to have a vehicle newer than 10 years old.

Also, they have children and there are not enough funds for large families to provide for child care funds needed to allow the parent to go to school or a job.

What we need are jobs to employ our people. Yes, we do have gaming and we did exploit some welfare participants, but we cannot employ all our people. There also is not enough private sector involvement. We still have a 20% unemployment rate of our people within our service area.

The goal of B.R.A. is to employ the people. We do not have the employment opportunities in the out state areas that are available in metro areas.

Also many of our jobs are entry level and the wages are barely above minimum wage.

How can we expect our people to take jobs that would still make them eligible for every federal assistant program that is available and expect them to become self-sufficient.

Yes, Welfare reform is needed, but do not stop the programs that are working. Tribal JOBS is!!

Currently serve 100 clients per quarter and we are having successful completions. Please give us more time to

Nearly every one of our people need to improve their basic skills. Many are school drop outs that cannot get into school unless they go on to a GED. These are offered in our area.

We also many 3rd generation AFDC clients who need to learn to get off welfare.

I agree that reform is long but to do it by word only is wrong.

If funds are block-granted, we have a set amount for tribal programs.

We also feel that the JOBS program should be a mandate program. If they do not participate, it should result in a loss of benefits to the non-participant.

Some rules on eligibility limitations are arbitrary and they should have to be flexible. Again, it boils down to the quality of life of our people.

Medical assistance will have to cover those people until at an affordable is themselves or offered by the new employer.

Child care has to follow the same rule.

The H.R. 3252 proposal by the Third Congress is vital to Indian Tribal programs. We are asking that it be continued.

Principal Wage Earner (PWE) or in the Unemployed Parent (UP) cases must take part in Job Search and work programs.

We are living at a time of constant change while many things stay the same. Yes, we support reform, but we also know what will work 100% more.

Thank you for your consideration.

FORT PECK TRIBES

Assiniboine & Sioux

TESTIMONY OF CALEB SHIELDS, CHAIRMAN
ASSINIBOINE AND SIOUX TRIBES OF THE
FORT PECK RESERVATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON BLOCK GRANTS TO TRIBES ON WELFARE
AND OTHER SOCIAL SERVICES PROGRAMS

Mr. Chairman and members of the Committee, I am Caleb Shields, Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana. We appreciate the opportunity to provide testimony on the issue of block grants to tribes on welfare reform and other social services programs.

As the Committee is aware tribal governments provide a broad range of services to their members, including health, nutrition, employment training, and social services. Tribes also administer their own court systems. In recognition of the political status of tribes, many federal statutes provide for direct funding to tribes. Welfare reform legislation can, and should, be structured such that tribal governments are able to be part of this national reform effort.

We have a number of concerns with the fundamental principles of the House passed welfare reform bill. We are especially concerned about the bill's provisions that would limit eligibility for the Temporary Assistance for Needy Families program. The bill would not permit assistance to be paid to unwed mothers under age 18, would not permit increases in assistance to families that have additional children while on assistance and would limit assistance to children as to whom paternity is not established. This approach will not decrease the problem of teen pregnancy, nor will it make fathers take responsibility for their children. What this approach will do is punish children. It will deny the most innocent of all persons the most basic needs in life. As a sovereign whose future depends on our children, we cannot support these heartlessly punitive measures.

The Indian tribes of America have yet to recover from the ravages of the Congressionally mandated 1953 termination policy and the post World War II Indian Relocation Program. The impacts of the grinding social and economic problems confronting tribal government and Indian communities today are a direct result of those ill conceived ideas. I implore you not to allow yet another disaster, in the guise of Welfare Reform, to be visited upon us. May I remind the Committee that Native Americans reside in the poorest communities in America.

In addition, the House bill's work requirements would have an especially harsh effect on isolated Indian communities, which typically have few private sector work opportunities. Fort Peck - located in a remote portion of northeastern Montana - is such a Reservation, with extremely few private sector jobs. Our people must not be driven off needed assistance because our remote location cannot provide them with job opportunities. The work requirements of the House bill must be tempered in light of circumstances like those present at Fort Peck and other reservations. We would urge the Committee to support a waiver for rural isolated communities with exceedingly high unemployment rates.

Poplar, Montana 59255 P.O. Box 1027 (406) 768-5155

The concept of welfare reform is appropriate for large cities or metropolitan areas where there is a variety of employment opportunities available. However, the concept does not take into consideration that there is no employment nor any type of industry that creates an economic base for tribes. When an Indian person is removed from welfare assistance he/she will then be forced to move off our reservation and compete with non-Indians for the few jobs that exist for today's workforce. This can only create increased hardships for others.

We support the concepts of reducing federal bureaucracy and moving control of programs and solutions to the reservation and community level. This is the foundation of the self-determination policy. However, we are concerned that the House passed welfare reform measure does not provide tribal governments with direct access to resources or with any authority to determine how Indian people will be served. History has shown that when block grant funds are allocated to states, tribes and their people receive few, if any, benefits from these block grants. This is highlighted by the administration of the Title XX Social Services block grant funds. Without adequate tribal allocations for any new welfare or other social program block grants that may be created, tribes will not be able to participate in the goals and benefits of welfare reform.

We recognize that in making this proposal to provide block grants to tribes for welfare and other programs for the poor a number of issues must be addressed. In this time of great change, we must craft solutions to these issues to ensure that tribal governments remain strong and continue to serve their people's needs.

One issue that has been raised is accountability. Tribes already operate numerous federal programs, which require us to comply with strict accounting principles and standards. We are required to undergo yearly audits and our indirect cost budgets are reviewed and approved by the Department of the Interior, or other federal agencies. The administration of welfare and other social services block grant programs would, in our view, not require any additional mechanisms regarding accountability beyond what tribes already employ as a matter of course. At the same time, it is important to recognize that a system of communication and information sharing will have to be developed between tribes and states to ensure that there is no duplication in services to individuals or families.

Another key issue is how federal law can assist in enforcement of child support orders. While this is a complicated topic, at a minimum, we suggest that any welfare reform bill require that as a matter of federal law comity state and tribal child support orders will be enforceable in all other jurisdictions. Tribal courts can fill a significant role in seeing that our children are adequately supported and we have urged the State of Montana to avail itself of our courts to enforce its child support orders. However, the State chooses instead to ignore tribal jurisdiction and sovereignty and has yet to file an action to enforce a child support order in tribal court.

Parents must support and take responsibility for their children, cash assistance should only be provided after it is clear that this cannot happen. Tribal courts play an integral role in ensuring that parents take responsibility for their children. This role is likely only to increase in light of the

welfare reform proposals. Thus, once again the need for additional funding for tribal courts is highlighted.

A third issue - how to define tribal service population for purposes of these block grants - is one that requires careful attention - and may perhaps best be handled through intergovernmental agreements on a case-by-case basis. We appreciate the Committee's willingness to work through these and other issues. As an initial matter, at Fort Peck, we believe that - with respect to cashassistance and other programs for the poor, we could best serve the entire reservation Indian population including the non-Indian parents of Indian children.

Finally, we believe that the answer to welfare reform on Indian reservations is a combination of economic development that will create jobs and a tribally designed "workfare" program that will train individuals for those jobs. The idea of "workfare" has been tried by some tribes and in some instances has reduced welfare significantly.

Again, we thank the Committee for the opportunity to provide testimony. We look forward to participating as this important debate continues.

FORT PECK TRIBES

Assiniboine & Sioux

ASSINIBOINE AND SIOUX TRIBES
OF THE FORT PECK RESERVATION
SUPPLEMENTAL TESTIMONY FOR
COMMITTEE HEARING ON WELFARE REFORM
AND BLOCK GRANTS IN INDIAN COUNTRY
APRIL 19, 1995

FORT PECK TRIBES

As supplement to our original testimony we would like to highlight the need to ensure that tribes receive an appropriate amount of the foster care funding. Historically, Indian children have been placed in foster care at a higher rate than non-Indian children. Currently, Indian tribes do not receive any Title IV-E foster care funding. This is despite the fact that our courts and ICWA workers are handling more and more child care placement cases every day. The State of Montana is now trying to cap the funds that are expended on Indian child foster care, which essentially means that as the number of children in foster care rises, the quality of the foster care system will decline.

We would also like to commend the Committee for its work to obtain a tribal set aside in the Title XX block grant program and would encourage the Committee to move forward with this bill.

90-277 O - 95 - 8

Alaska Native Coalition
on
Employment and Training

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Aleutian-Pribilof Island Association
Association of Village Council Presidents
Bristol Bay Native Association
Central Council Tlingit & Haida Indian Tribes
Cook Inlet Tribal Council
Chugachmiut
Kawerak, Inc.
Kenaitze Indian Tribe
Kodiak Area Native Association
Maniilaq Manpower
Metlakatla Indian Community
Orutsararmuit Native Council
Tanana Chiefs Conference, Inc.

ANCET Officers

Sharon Olsen, CCTHITA Chairperson

Donna Scott, TCC Vice Chairperson

Connie Hogue, KANA Secretary

Keri Selby, APIA Treasurer

ANCET'S CONCERNS WITH WELFARE REFORM
1/7/95

In recognition of the continuing government to government relationship between federal government and Indian Tribes, ANCET supports a 3% Tribal Set-Aside and an option to design and administer our own welfare programs in the spirit of self-determination. We strongly recommend the State of Alaska consider the concept of a Native American Block Grant process.

We support the concept of giving the money to the local community to serve their clients and in that vein feel we can provide our people with the services they need to help them become self- sufficient and less dependent on welfare programs.

1) Job Opportunities and Basic Skills (JOBS) Program. ANCET supports continued funding at current and or higher levels of this program.

2) Economic Development in Rural Areas. ANCET supports maximizing Economic Development activities to ensure that there are jobs for all our people especially those dependent on welfare assistance programs.

3) Term Limits. Due to the lack of employment opportunities and the uncertain timeframe for economic development in rural Alaska, ANCET does not support term limits especially in rural communities. Welfare reform won't work if there are no jobs at the end of reform. Proposed term limits will increase the numbers of homeless and family breakdowns and further strain local resources already strained now. When you mandate penalties such as these, you run a risk of eviction or inability to pay for immediate needs. The proposed time limits would not allow for completion of education, employment and training goals.

BEST COPY AVAILABLE

4) Bureau of Indian Affairs General Assistance (BIA/GA). BIA's General Assistance/Tribal Work Experience Program (TWEP) monies are currently slated for a potential 50% cut in funding levels. If a large number of AFDC recipients are cut from the welfare rolls, GA will not necessarily be available to act as a safety net. Anyone who is eligible for AFDC or SSI is not eligible for BIA/GA. Currently, some tribes are administering successful TWEP programs using innovative concepts.

5) Teen Parents. ANCET is opposed to denial of AFDC benefits to teen parents based solely on age. Although we support the concept of teen mothers living at home or with other responsible adults, there are exceptions that need to be considered and the system needs to be flexible to accommodate special circumstances. The mandatory provision that mothers live at home increases the risk that teen mothers might be returned to an abusive environment.

6) Child Support Enforcement. Although we support the concept of paternity identification, we do not support measures which would penalize the mother and the child. Some mothers are unable to identify the father.

7) Transitional Benefits. ANCET supports Child Care Transitional Benefits, however, tribal members seldom receive these benefits from State welfare agencies that administers these funds.

8) Reduced Welfare Benefits. ANCET opposes any legislation which would cut welfare benefits by 6% to 15% cuts. And, we further oppose legislation that would eliminate distribution of Permanent Fund Dividends to welfare recipients.

9) Definition of "Work". ANCET recommends an expanded definition of "work" to include the idea of subsistence activities, seasonal employment, and work identified by tribes as beneficial to tribal members and local communities.

10) Entitlement Status. ANCET supports the continuation of AFDC as an entitlement program.

11) Focus on Incentives vs. Sanctions. ANCET supports the idea of providing incentives versus implementing sanctions.

12) Task Force. ANCET supports the implementation of a Welfare Task Force to be composed of State and Tribal members.

State of Minnesota
Department of Human Services
Human Services Building
444 Lafayette Road N
St. Paul, Minnesota 55155

April 4, 1995

The Honorable John McCain
Chairman for Committee on Indian Affairs
United States Senate
Washington, DC 20510-6450

Dear Senator McCain:

RE: Block Grants in Relation to the Red Lake Band of Chippewa Indians

Bobby Whitefeather, Tribal Chairman of the Red Lake Band of Chippewa Indians, has informed me that he will testify in your committee on April 5, 1995 regarding block grants as they relate to services for persons on the reservation. He informs me that a representative of Beltrami County, Minnesota, will also be present. I submit this letter for your consideration in conjunction with that testimony.

The Minnesota Department of Human Services generally supports a direct relationship between the Band and the federal government in this area. We support Chairman Whitefeather's testimony in favor of a direct block grant from the federal government directly to the Band, in which the Band would be responsible for arranging to provide services and would be directly responsible to the federal government for both program outcomes and fiscal management. One question is whether the Band or the State would have responsibility for Band members who are not on the reservation.

We will be available to the Band to provide technical assistance, if needed, as it undertakes to administer the block grant.

Thank you for your consideration of these comments.

Sincerely,

MARIA B. GOMEZ
Commissioner

AN EQUAL OPPORTUNITY EMPLOYER

WILLIS KNOLE
President

NORMAN WILSON
Vice President

Rosebud Sioux Tribe

ROSEBUD INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA 57570

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CYNTHIA L. GARY
Treasurer

GERRI GORDON
Secretary

TODD BEARSHIELD
Sergeant-at-Arms

April 20, 1995

The Honorable John McCain
United States Senate
Washington, DC 20003

Dear Senator McCain:

This letter is to correspond with you regarding measures that are proposed in the 104th Congress and the concerns of Tribal Governments that should be considered as you study the impact of welfare reform and block grant initiatives on tribal and rural communities.

The Rosebud Sioux Tribe as a sovereign nation is opposed to measures, such as H.R. 4 and to block grant federal programs to the states. While the Rosebud Sioux Tribe is opposed to block granting human service programs to the states, any welfare reform or block grant measures should provide a direct set-aside for tribes to allow tribal members. Funding allocation formulas should include a base amount for small tribes to administer programs. Tribal allocations should be deducted from the full federal appropriation before the funds are allocated to the states or territories. The Rosebud Sioux Tribe is in the best position to locally plan appropriate services for tribal members.

Historically, the Rosebud Sioux Tribe has not had success in gaining access to much needed services. For example, the Rosebud Sioux Tribe would have to enter into a Tribal/State Contract if they want to administer services through Title XX (Social Services). Our Tribe has begun this process but so far, it has proven to be a rather lengthy procedure. The Head Administrators of the different departments of the State Office of Child Protection Services in Pierre, SD has each had to go over our Tribal manual to assure that it would meet their standards on Child Protection.

Access to state administered services has been problematic due to issues such as different sets of law and regulations, transportation, service location, rural-isolation and language barriers. There are also potential difficulties with the state monitoring the services, the imposition of state standards and different court systems.

H.R. 4 does not contain provisions for direct funding for tribal governments for many of the programs. Currently, programs such as JOBS, Title IVB Child Welfare and the Family Preservation and Support Act Programs provide direct funding to the Rosebud Sioux Tribe.

In addition, H.R. 4 does not provide for the protection of the Indian Child Welfare Act which has been a significant law for the Tribes in providing needed placement of Indian children in Tribal communities and preventing the unwarranted removal of Indian children from their Tribes. The section on "Removal of Barriers to Interethnic Adoption", would seriously undermine the intent of ICWA.

The majority proposals in the 104th Congress have not adequately considered the following in the proposed legislative initiatives:

- the legal status of tribes as independent federally recognized tribal governments;
- the impact of welfare reform and block grant initiatives on the Indian reservation populations which comprise a significant proportion of participants in the AFCD, SSI, food stamp and nutrition programs;
- the fact that states have not in many cases entered into intergovernmental agreements with tribes for the provision of state administered services;
- the lack of protection of Indian children from unwarranted removal from their homes, as provided in the Indian Child Welfare Act;
- the hardships the proposals will place on Indian families due to lack of employment opportunity, transportation, child care, child support enforcement and job service programs due to rural isolation and economic disadvantages.

The Rosebud Sioux Tribe is attempting to improve the overall economic conditions on our reservation through the establishment of economic activities such as gaming. There is also the longstanding need for resource development and competing needs such as law enforcement, roads, facilities, and infrastructure community development.

Gaming revenues provide Tribes with never before available resources to develop governmental infrastructures and will not eliminate the need for federal support in areas such as human services, health , housing, nutrition, jobs development and education. It is a unique historical and legal Congressional responsibility based on treaties and law to provide federal assistance to Tribal governments.

Your expedient action in regard to these concerns is appreciated. If you or your staff have questions, please contact the Chairman of the Rosebud Sioux Tribe of Rosebud, South Dakota at: 605-747-2381.

Respectfully Submitted by,

William Kindle

William Kindle, Chairman
Rosebud Sioux Tribe

Rosebud Sioux Tribal Council Members:

Forest County Potawatomi Community
P.O. Box 340, Crandon, Wisconsin 54520
POTAWATOMI

APRIL 12, 1995

The Honorable John McCain
CHAIRMAN
SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS
SD SENATE, 838 HART BLDG.
WASHINGTON, DC 20510
FAX (202) 224-5429

Honorable Sir;

This letter comes to you out of the concern of the Forest County Potawatomi Community about pending welfare reform legislation. In our community, we have a long standing problem of receiving services for our tribal membership through state and county administrated AFDC and other welfare programs. It is only by the tribe's administration of social services that we are able to coordinate service and provide fair and equitable treatment of community members. We currently service the community on and near our scattered reservation lands by the state funded RMIP (Relief to Needy Indian Persons) program. This is a general relief program designated for elimination in Wisconsin's 1996 budget. State plans also include taking away Medical Assistance for health care other than emergency. Tribal members must go to the county for AFDC, Food Stamps, or other services we cannot provide.

Even though the Potawatomi have an excellent gaming operation, this is not always an employment option for members who may have medical or other barriers to their ability to work. Gaming revenues are obligated toward other tribal program developments (such as housing, health, education, and community services). By tribal administration of social services, we are better able to coordinate community services for comprehensive care of our membership. While we also employ many non-tribal members, our guidelines are tailored to service tribal members, spouses, and other Native Americans part of our community.

Always there will be someone who is unable to provide for themselves, most often due to temporary circumstance. It is not traditional in our community to neglect those who are without. It is seldom by personal choice that one goes on AFDC or asks for assistance to have shelter, food, clothing, or health care. Each community is the best judge as to the needs of it's members. Tribes need the opportunity to show that they can successfully manage social service programs on the same level as states or counties.

These programs (if they can be funded!) can be administrated with similar guidelines as existing or other programs, yet tailored to fit tribal needs and communities. Direct funding or match opportunities for tribes would allow services to go directly to clients instead of being lost within state budgets. Most of our membership would do without rather than go to an outside agency for assistance. The cycles of poverty will never be broken unless our own people can lead the way. And unless tribal administration of social services is supported, there will always be Native American families without hope.

We are asking your support by whatever means possible to ensure that pending welfare legislation include language and protection for tribal peoples.

Respectfully,

Al W. Milham

Al W Milham
TRIBAL CHAIRMAN

CC: FILE
RNIP

Cook Inlet Tribal Council, Inc.

April 3, 1995

Senator Daniel K. Inouye
Vice Chairman
Committee on Indian Affairs
United States Senate
Washington, DC 20510

Cook Inlet Tribal Council (CITC) is aware that welfare reform is a high priority in the new Congress, and we are excited by the opportunity to assist you in shaping the revisions to the welfare system, as any changes will greatly impact our Native families. CITC welcomes Congress' work to end dependency on welfare, as we have deemed this to be one of our most important goals during the past few years. We are deeply concerned by the recent bill by the Human Resources Subcommittee of the House Ways and Means committee, to terminate tribal JOBS programs. Under the bill the tribal funds would be folded into a block grant intended to cover the payment of cash benefits, as well as various services, such as welfare-to-work services, and such block grant money would only go to state welfare agencies. This bill has the effect of taking the money now provided directly to tribes for their JOBS programs and giving it to the states. We are concerned that the needs of Native people have not been considered as they have not been incorporated into the proposed bill.

Through our tribal efforts, we have found that work with dignity is the best cure for dependency. We have learned that the approach used must vary when working with individual families and their needs. Some approaches are better than others, while some do not work at all. The CITC Job Opportunities and Basic Skills Program (JOBS) has been a very important tool in our effort to end welfare dependency among our Native people. As you know, nationally there are approximately 150,000 to 175,000 Native people receiving AFDC in reservation areas and in Alaska. According to the Department of Health and Human Services, there are 9,000 participants in tribal JOBS programs in an average quarter. In Fiscal Year 1993, 2,000 job placements were recorded. It is important that tribes be allowed to continue such work with our own people, rather than expecting the states, which are already heavily loaded, to adequately serve Native people.

670 W. Fireweed Lane, Suite 200 • Anchorage, Alaska 99503 • (907) 265-5900 • FAX (907) 265-5947

Through the CITC JOBS Program, Native families have realized many successes as JOBS clients successfully complete education and training courses in Education, Nursing, Computers, Business, Mechanics, and Hairdressing. The certificates and degrees they receive help them to obtain unsubsidized employment and free themselves from the welfare system forever. We have also had clients involved in journeyman apprenticeship programs, who have obtained employment working on the Indian Health Service's hospital replacement project for the new Alaska Native Medical Center in Anchorage. Other clients have taken the most basic step toward self-sufficiency and independence by completing their high school diplomas and GEDs. These individuals now have goals that they are working toward. They are able to find a way out of the welfare system, because of opportunities available to them through the CITC JOBS Program.

Our clientele come from various backgrounds and vary in age; the problems differ from family to family, but some of the very common needs include: child care assistance, suitable clothing for interviews, transportation, counseling and supportive services. The CITC JOBS Program helps fill these needs in order for these clients to reach their educational and employment goals. Below are the stories of three of our clients.

"I am a 24 year-old single parent of 3 children. I have had a lot of experience in the office field but left the village to pursue higher education at the University of Alaska Anchorage, as a result, I had to apply for public assistance in the form of Aid to Families with Dependent Children, Food Stamps, and Medicaid. I completed one-year of my higher education with assistance from the CITC JOBS Program which was able to offer child care, vehicle repair, one on one counseling and other supportive services. I took some time off to have my third child and decided that I would rather work. I was offered a volunteer position which eventually led to at first part-time, then full-time employment, and thanks to the JOBS Program and the child care assistance, I am self-sufficient and off of the welfare rolls permanently."

GDM is a mother of two in a two parent household. GDM first became involved in CITC's JOBS Program upon her completion of high school, when at the age of 18, she first became a mother. Her second child was born when she was 20 years old. Pursuit of higher education to enhance her employability skills became important as the responsibility of parenthood increased with the birth of the couple's second child. She completed two semesters of college in the field of Education, however, took one semester off to care for her newborn baby.
Seven weeks later, GDM was contacted by the JOBS Program to inform her of a job opening. She completed an application packet, updated her resume, interviewed for the job, and began full-time employment on January 17, 1995.

GDM was informed that she would no longer be eligible for AFDC, and would not receive a February stipend. Her first paycheck came and went, but with her support system coupled with the independence of having a secure job, her dreams of becoming self-sufficient and a positive role model for her children are being realized.

"I am a 29 year old single mother of three children, ages currently 5, 9, and 10. With help from the JOBS Program, at the age of 26, I was able to return to school at the Adult Learning Center to complete my GED. I then was able to attend a computer training course that was suggested to me by my JOBS counselor. After the completion of my computer training course, I was now skilled and ready to find a good job and no longer needed to depend on AFDC to support me and my children. Without the support of the JOBS program I wouldn't have been able to afford the child care costs. The money that was given to me by the JOBS program not only helped in child care costs, but also helped with clothing costs for job interviews, vehicle repairs that allowed me to maintain my employability and gas costs to get me to and from school, to job interviews and lastly to my place of employment for a limited amount of time during that transition. My JOBS counselor was a great source of encouragement, when things seemed dark she was there to listen and to give suggestions. I was treated with respect, my dignity and self-esteem was elevated as each accomplishment became reality, I am very grateful for the JOBS program, as a previous AFDC recipient and JOBS client that is successful and contributing member of society."

As you can see, the tribal JOBS programs are making an important difference to the lives of Native people around the country. To abolish a program that serves America's most disadvantaged population, is nothing short of a travesty and will undoubtedly even greater difficulties for Native children and families. Any welfare reform that is going to make a positive difference in the well-being of our families must include employment and training components which:

1. Recognize the government-to-government relationship between our tribe and the federal government and enable our tribal government to serve our people.
2. Stimulate economic development to insure that there are jobs for all our people, including those now dependent on public assistant.
3. Strengthen the kind of services we now offer under our tribal JOBS Program by enabling us to serve more people and by providing direct funding to our tribe for related child care services and work slots.

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Also, we feel that a tribal set-aside of a certain percentage of the funds in any basic AFDC block would be helpful in maintain the successes that tribal JOBS programs have met nationwide. This would have the effect of turning all responsibility for running the cash benefits now associated with AFDC to tribes, as well as the funding for services such as JOBS. Another idea that we would support is to create a tribal block grant to fund only services, such as JOBS, leaving the responsibility for paying (and denying) cash benefits with the state welfare agencies.

Our tribe wants to be a part of any public hearings that are held on these issues. Please inform us of how we may participate, so that the needs of Native people are considered, before further action is taken by Congress.

Sincerely,

COOK INLET TRIBAL COUNCIL, INC.

Ramona Sustopka-Duerre

Ramona Sustopka-Duerre
Employment Services Department Director

Spokane Tribe of Indians
P.O. Box 100 • Wellpinit, WA 99040 • 509/258-4581 • Fax 258-9241

CENTURY OF SURVIVAL
1881 - 1981

Hand Delivered

April 20, 1995

The Honorable John McCain
Chairman,
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Dear Chairman McCain:

On behalf of the Spokane Tribe and the Affiliated Tribes of Northwest Indians (ATNI), I am submitting a position paper for the hearing record of April 5, 1995, Funding Block Grants Directly to Indian Tribes.

We are also in general agreement with the recommendations of the DC working group in response to the questions contained in your letter to Ms. Karen Funk. A copy of the recommendations and our response to several questions is enclosed.

Your continued efforts on behalf of tribal governments and tribal individuals is truly appreciated.

Sincerely,

Warren Seyler

Warren Seyler
Chairman

DIRECT FUNDING THROUGH BLOCK GRANTS TO INDIAN TRIBES

POSITION PAPER OF THE SPOKANE TRIBE OF INDIANS AND THE AFFILIATED TRIBES OF NORTHWEST INDIANS

• **INTRODUCTION**: The need for direct funding through block grants to Indian Tribes to administer welfare and other social service programs is not new for the Spokane Tribe of Indians ("Spokane Tribe") and the Affiliated Tribes of Northwest Indians ("ATNI"). Over the past several years, both entities have expended valuable resources to advocate funding through direct block grants to provide quality social services to our people. The Spokane Tribe and ATNI continue to favor direct funding through block grants because that approach provides necessary resources to combat the unique social problems existing on Indian reservations while at the same time allowing Tribal governments to find the best means for addressing their own social and welfare problems. In addition, a block grant approach maintains the Federal trust responsibility and fosters the government-to-government relationship between Indian Tribes and the federal government and enhances tribal self-governance and self-determination.

• **NEED FOR FUNDING** -- *Indian people experience the highest rates per capita of any population in the United States for problems such as suicide, homicide, accidental death, alcoholism and mental disease.* Underlying many of these problems is the lack of access to meaningful employment for tribal members both on and off reservation and the corresponding stress on Indian families. Unemployment rates on most reservations range from an average of 35% to as much as 75%. Until jobs are created on reservations, funding is essential. Direct grants to Tribes is a solution that can provide necessary resources efficiently and timely while maximizing the available funding.

• **BLOCK GRANTS COMPORT WITH THE FEDERAL TRUST RESPONSIBILITY** – *Direct funding through block grants to Indian Tribes comports with the Federal Trust responsibility to Indian Tribes and Indian people.* The Federal Trust responsibility is well-established and flows from numerous treaties, promises and obligations of the United States, and the countless transfers of land from the Tribes to the United States. The Federal trust responsibility was recently reaffirmed by the President for all federal agencies. The trust relationship runs between the federal government and tribal governments -- the parties that entered into treaties and other contractual agreements. For this reason, direct funding to Tribes instead of through states, most directly comports with the trust responsibility.

• **BLOCK GRANTS FOSTER GOVERNMENT-TO-GOVERNMENT RELATIONS** –*Block grants directly to Indian Tribes enhances the existing government-to-government relationship between the federal government and the Tribes.* This relationship recognizes tribal governments as the government responsible for the welfare of tribal constituents, rather than state governments or a federal agency such as the BIA or HHS. The government-to-government relationship has been endorsed, supported and reaffirmed by all Administrations since President Nixon signed into law Pub. L. 93-638, the Indian Self-Determination Act in 1975.

• **BLOCK GRANTS EFFECTUATE TRIBAL SELF-GOVERNANCE** –*The fundamental role of a sovereign government is to determine how best to provide for its people.* Block grants directly to Indian Tribes allows for this and effectuates the current federal policy and law of Self-

Governance. Self-Governance was proclaimed and endorsed by Congress and President Bush in 1988 (Pub. L. 100-472) as a demonstration. In 1994, President Clinton reaffirmed the United States' commitment to Self-Governance, government-to-government relations and the Federal trust responsibility by signing the Self-Governance Act of 1994, Pub. L. 103-413 into law. In enacting these laws, Congress and the Executive Branch explicitly acknowledged that "transferring control to tribal governments . . . over funding and decision making for Federal programs . . . is an effective way to implement the Federal polic(ies) of government-to-government relations with Indian Tribes and . . . Indian self-determination." Pub. L. 103-413, sec. 202(5)(A)&(B).

• **BLOCK GRANTS MAINTAIN AND PROMOTE INDIAN CULTURE** – *In order to achieve long term success, Tribes must be allowed to design and operate their social service delivery systems in manner consistent with the cultural needs of their people.* Federal, state and local governments are too often unfamiliar with the culture and unique needs to Indian people. As a result, social programs designed and administered by these entities are often unsuccessful and insensitive in meeting the needs of Indian people. The block grant approach allows Tribes to assert control over all of their social service funds, including funds generated by the Tribes themselves as well as federal funds appropriated to assist all needy citizens.

• **BLOCK GRANTS PROMOTES EFFICIENCY AND EFFECTIVENESS** – *Funding to Tribes and Indian people through grants to states is inefficient and creates an unnecessary level of bureaucracy.* At a time when available funding is scarce, it is important to ensure that all funding goes to those in need, not to layers of bureaucracy. It is also important to note that state and local administration of tribal funding has failed to deliver services to Indian people. Recent federal reports document some of the problems:

1. GAO Report of March, 1994, Juvenile Justice: Native American Pass Through Grant Program. (GAO/GGD-94-86FS). The Report documents many problems, including inadequate funding, delays in delivery of funds to Tribes, poor communications between states and Tribes, and funding so small that in some cases Tribes did not apply for it.

2. Office of Inspector General Report of August, 1994, Opportunities for ACF to Improve Child Welfare Services and Protection for Native American Children. (OE1001-93-00110). States pass through an extremely small amount of funding to Tribes from the large amount of federal Child Welfare and social service funds they receive. In these cases, states count Indian people for purposes of receipt of federal funds, but are not required to pass through funds to tribal governments.

Described below are some of the programs and services that would benefit from the direct funding of tribal social and welfare programs via Block Grants:

AGING ADULT SERVICES

The life expectancy for Native Americans is alarmingly lower than that for non-Native Americans -- in some tribal settings the average life expectancy does not exceed 50 years. For

our elders who do survive, appropriate housing, social and health support services are nearly non-existent on Indian reservations.

Direct funding of these dollars would allow Tribes to provide services to aging residents of the reservations without requiring that they be moved away from their families and support networks. In addition, tribally-administered aging programs would allow culturally oriented services, and allow service providers to be Tribal members. Our elders are an invaluable resource for our people. They educate our children. Their well-being is essential.

DIVISION OF ALCOHOL

The Nation's highest rates of alcoholism, alcohol-related deaths and fetal alcohol syndrome are among Native Americans. Extreme poverty and cultural conflicts are often causes of this severe social problem. Because Tribes have had varying degrees of success in combating substance abuse, direct funding would allow Tribes to develop substance abuse services uniquely fashioned to meet the needs of Indian people. As the system presently exists, the culture and traditions of tribal people are not addressed. Equally important, treatment standards and ideology are developed based on Western/European medical models. Thus, the outcome for Indians is more often unsuccessful than successful: direct funding for these programs will provide long term solutions to the problems in a cost effective manner.

DIVISION OF CHILDREN AND FAMILY SERVICES

Because of both a lack of interest and a lack of understanding, state agencies have not fully complied with P.L. 95-608, the Indian Child Welfare Act ("ICWA"). As a result, tribal programs continue to experience lack of funding, staff, and training. This, compounded by poor government-to-government relationships in the higher levels of both state and federal agencies, creates barriers to implementation of successful programs.

Direct Child Welfare funding (Title IV-E and Title IV-B) would enable Tribes to define child protection, pregnancy planning and adoption services that would keep families together and in the same community. The ICWA attempts to do this and vests in tribal governments and tribal courts jurisdiction over adoption issues relating to Indian children. However, the necessary programs that could have a positive effect at a much earlier stage, are currently administered by state or county programs resulting in an inefficient use of limited social service funds. To maximize available funding and to make a long term impact on the health and well-being of Indian children, Tribes must be allowed to control these programs from the earliest stage.

DEVELOPMENTALLY DISABLED

Developmentally Disabled services, including Community services, family support, and residential services, are not adequately available to Indians living on reservations. In order for Indians to obtain and receive Developmentally Disabled services, the state and federal agencies must first evaluate and re-evaluate tribal members. This system is both cumbersome and ineffective. Moreover, the process is dehumanizing to tribal people and often abandoned before completion. The ultimate result is that developmentally disabled tribal members are not

receiving adequate assistance. Direct funding would meet this unmet service need and reduce the high rate of alcohol abuse, physical abuse and neglect and unemployment of the developmentally disabled.

DIVISION OF INCOME ASSISTANCE AND DIVISION OF VOCATIONAL REHABILITATION

The various welfare programs available to combat the problems associated with high unemployment need to be controlled and administered by the Tribes themselves. Tribal control and administration allows for the development of standards that address the unique problems caused by unemployment on reservations while maintaining the traditional Indian family unit, which is often described in non-Native American terms as an "extended family." The present system fails to recognize and accommodate the cultural and traditional Indian family unit. As a result, the administration of the present system has the effect of penalizing Indian tradition and culture and contributes to the destruction of the Indian family unit. Direct block grants to Indian Tribes would enable Tribes to design, organize, and implement programs that would contribute to the re-building and strengthening of Indian families and Indian value systems. Thus, the need for and cost of income assistance will decrease in the long run.

DIVISION OF JUVENILE REHABILITATION

Like nearly all other communities across the nation, Tribes have recently been confronted with rising incidents of gang violence on reservations. The states' administration of juvenile justice programs has been inadequate. Direct funding would allow Tribal Communities to create adequate programs in conjunction with tribal court systems. Equally important, Indian Tribes would have the resources to restructure and revitalize existing systems in order to make them more attune to the new problems facing Indian youth.

MENTAL HEALTH

Services for the mentally disabled are nearly non-existent for tribal people. All services must be coordinated through outside state and federal agencies. These services are non-traditional and do not have cultural components. Many times the providers have little or no knowledge of Indians and the specific mental health needs of individuals and Tribes they are serving. Chronic mental health disease and suicide are in epidemic states among the Native American population. The present system does not provide the answer, nor does the system appear to be interested in, or capable of relieving the symptomology of the epidemic. If funding is issued through block grants to Tribes, Mental Health dollars could be used to provide services previously neglected and disallowed. Indian Healers and traditional ideology could be incorporated with present day systems approach to mental health care.

We thank you for the opportunity to submit this position paper on behalf of the Spokane Tribe of Indians and the Affiliated Tribes of Northwest Indians. We stand ready to work with the Committee on behalf of our Spokane tribal members and member Tribes of ATNI on this most important issue of Funding Block Grants Directly to Indian Tribes.

Position Paper Submitted by Spokane Tribe of Indians and the Affiliated Tribes of Northwest Indians

**RESPONSES TO QUESTIONS
IN SENATOR MC CAIN'S LETTER ON
BLOCK GRANTS DIRECTLY TO INDIAN TRIBES
SUBMITTED BY
SPOKANE TRIBE OF INDIANS AND THE
AFFILIATED TRIBES OF NORTHWEST INDIANS**

1. **How can Congress provide for flexible tribal administrative authority and still hold a Tribe accountable for basic financial management and program implementation?**

Response: In terms of basic financial management, Tribes are considered to be states for the purpose of the Single Audit Act, 31U.S.C. 7501(14). This Act requires annual independent audits in accordance with generally accepted government auditing standards if a Tribe receives in excess of $25,000 in Federal financial assistance.

31 U.S.C. 7502 (a) and (c). This Act has been implemented through OMB Circular A-128. This existing authority should be adequate to ensure that Tribes meet basic standards pertaining to financial management.

In terms of holding Tribes accountable for program implementation, while at the same time providing them with flexibility in administration, we believe that the best approach is for Congress to direct HHS to work actively with Tribes following passage of the legislation in several ways:

- HHS should work closely with Tribes to develop criteria for plans to be submitted by Tribes to access the funds. The criteria would establish agreed-upon goals and benchmarks for tribal programs to meet, but would allow Tribes maximum flexibility in determining how to meet those goals in their plans. HHS could review a tribal plan to determine whether a tribe has advanced programs in its plan designed to address each of the required goals and make recommendations to Tribes as to how submitted plans might be improved but should not have "veto power" over the design of a tribe's overall program any more than it would have veto authority over state plans.

- HHS should be available for technical assistance in the development of plans, with Tribes eligible to receive planning funds out of the tribal allocation to permit them to adequately prepare initial implementation plans.

- HHS should be charged with the responsibility of monitoring the implementation of the block grants and report back to Congress every 3 years regarding any successes or failures that it may have observed. This will allow Congress to intercede if tribal programs have problems in program implementation.

In addition, Tribes should be permitted to access only some of the block grants, if they so choose, and to phase in their involvement over time. This will help ensure that an individual tribe runs only those programs that are within its administrative ability and capacity at any given point in time.

■ SPOKANE TRIBAL COMMENTS: DEVELOPING CRITERIA FOR PLANS BY HHS AND THEN SUBMITTING TO TRIBES COULD BE A DELAYING MECHANISM. IHS/HHS SHOULD RECEIVE THE OVERSIGHT AUTHORITY BUT NOT THE VETO POWER.

2. **How can Congress encourage Tribal and State courts to work cooperatively to set and enforce child support orders that off-set State and Tribal cash assistance programs?**

Response: We understand that the NCAI Task Force on Child Support Enforcement will be forwarding recommendations to you.

■ SPOKANE TRIBAL COMMENTS: THE STATE OF WASHINGTON IS VERY AGGRESSIVE ON CHILD SUPPORT ENFORCEMENT.

3. **How can Congress establish clearly defined service populations, so that a State, a Tribe, and the individuals in need of assistance can easily understand which individuals the State is to serve and which the Tribe is to serve, preventing duplicative services and gaps in service?**

Response: As a general principle, a Tribe should be funded and authorized to serve all Indians within the Tribe's customary service area. (The term Tribe includes Alaska Native organizations, and the term Indians incudes Alaska Natives.)

Giving each Tribe the funds and responsibility to serve members of other Tribes living within that Tribe's service area is consistent with current fund allocation and program eligibility systems for many Federal programs. It is also consistent to give the responsibility for services to all non-Indians within the Tribe's customary service areas to the State.

The term customary service area is meant to include those adjacent near-reservation areas which the Tribe has the responsibility for serving under most of its current human service programs. In cases where customary tribal service areas overlap, funds and responsibilities can be divided on the basis of tribal membership.

The nature of the services under specific block grants, such as the school-based nutrition program, may require a modification of this general principle where it is more efficient and cost-effective for the tribe to serve non-Indians, as well as Indians.

With the exception of programs providing cash benefits directly to individuals, needy Indian individuals should not be denied eligibility for State-based services. States may be able to provide some types of services which Tribes cannot. Also under a percentage-off-the-top type of set-aside, needy Indians will be included, directly or indirectly, in the counts upon which State allocations are based. Allocations to Tribes under such an arrangement are not deducted from the allocations of States in which those Tribal service areas are located.

Within the tribal area, the Tribe would be the primary provider of services, with the State having a secondary role. Indian people would not be permitted to "double-dip" in terms of obtaining identical benefits from a Tribe and the State, but State services would be available to

them where a Tribe did not offer a comparable service. This structure would ensure that Indian people do not fall into the cracks between the State and Tribal systems, while at the same time it makes clear where the initial responsibility to provide service lies. It is also consistent with the dual Tribal and State citizenship enjoy by Indian people.

■ **SPOKANE TRIBAL COMMENTS: TRIBES SHOULD ALREADY HAVE THEIR POPULATION STATISTICS IN THEIR RESPECTIVE SERVICE UNITS AND SHOULD ENSURE THAT THE MOST RECENT STATISTICS ARE IN CURRENTLY IN USE. WE ARE IN TOTAL AGREEMENT THAT "SERVICE POPULATION" BE CLEARLY DEFINED.**

4. **Would it be advisable for Congress to provide a Tribe with funds to serve non-member Indian on its reservation? How about non-Indians on its reservation?**

Response: Yes, with respect to funding for non-member Indians. In general, no with respect to funding Tribes to serve non-Indians. (See the answer to question 3 above.) There may be exceptions to this. For instance, under the House passed welfare reform bill, the school lunch program would be a block grant to states. Should Tribes receive school lunch block grant monies it would be advisable for them to serve all eligible students in the schools on their reservations so that there would not exist both a state-administered and a tribal-administered program within one school.

5. **Would it be advisable for Congress to provide a Tribe with funds to serve member Indians who reside off, but near the reservations? How about non-member Indians off, but near the reservation.**

Response: Yes to both questions. (See the answer to question 3 above.)

■ **SPOKANE TRIBAL COMMENTS: TRIBES SHOULD ALREADY HAVE THEIR POPULATION STATISTICS IN THEIR RESPECTIVE SERVICE UNITS.**

6. **Would it be advisable for Congress to provide a Tribe with funds to serve non-Indians members of an Indian's immediate family, such as a non-Indian parent whose child is Indian?**

Response: In general, the eligibility for services should be based on the Indian status of the direct recipient of services (adult or child.) Where the services must involve the entire family, eligibility for services should extend to all members of the immediate family of an eligible Indian individual, regardless of Indian status.

It is important to distinguish between the data used for fund allocation systems and the eligibility for program services, which may be more flexible. For instance, data available on the universal need among Indian people may not include non-Indian members of families or households containing an eligible Indian person. A similar consideration applies with respect to the availability of data for near reservation area.

7. **Are there some programs or activities included in the House bill that simply do not make sense under any circumstance for a Tribe to have a role in administering, even on a pass through basis? If so, please identify them and explain why they do not make sense.**

Response: No, although we believe that Tribes should be able to choose which block grants they wish to administer. In the instance of the Temporary Assistance for Needy Families Block Grant in the House bill (which would combine funding for the Aid to Families with Dependent Children cash assistance, AFDC Administration, JOBS Program, and the Emergency Assistance Program into state block grants) you may want to craft the Senate legislation so that Tribes have the options of administering the services portion and/or the cash assistance portion of it.

It is much better option for Tribes to receive funding from a federal allocation for tribal governments, rather than requiring Tribes to access funds from states. Direct federal to tribal funding is consistent with well establish government-to-government relationships, and it is also a more efficient and reliable system for distribution of funds than is a pass-through of funds from states. Pass through of funds to Tribes from states would likely provide funds to Tribes on a per capita basis -- an arrangement which does not take into account the level of need of the Tribe nor the fact that the number of Indian Tribes demands a somewhat higher level of funds than the amount which would be generated by a strict population formula.

- We refer you to GAO Report of March 1994, Juvenile Justice: Native American Pass Through Grant Program (GA0/GGD-94-86FS). In the case of the Juvenile Justice program, there was a mandated state pass through of funds to Tribes. The report documents many problems, including inadequate funding, delays in passing through funds to Tribes, poor communications between states and Tribes, and funding so small that in some cases Tribes did not apply for it.

- We refer you also to the Office of Inspector General Report of August, 1994, Opportunities for ACF to Improve Child Welfare Services and Protection for Native American Children (OEI001-93-00110) which documents that states pass through only an extremely small amount of funding to Tribes from the large amount of federal child welfare and social service funds they receive -- in these cases, states count Indian people for purposes of receipt of federal funds but are not required to pass through funds to tribal governments.

■ SPOKANE TRIBAL COMMENTS: WE ARE IN AGREEMENT OF ALL OF THE ABOVE RESPONSES.

8. **Would it be advisable for Congress to restrict tribal eligibility for some or all block grant funds to those meeting certain minimum service population sizes? If so, which funds and what size? If not, would it be advisable to restrict the eligibility of smaller Tribes only though multi-tribal consortia with a minimum service population size? If not, what mechanism can Congress use to make tribal assumptions or pass-through control of federal welfare and social service funds cost effective?**

Response: We believe that -- (1) the principles of Tribal sovereignty and, (2) the advantages obtained by local government control over programs serving a population with

unique needs -- are compelling reasons why all Tribes should be eligible for all block grant funds. However, we believe that it would be reasonable to require that the smallest Tribes form consortia where their size would prevent them for running cost effective programs.

Such a requirement is best implemented by instructing HHS to develop regulations with the full participation of Tribes. Congress could mandate that the goal of such regulations would be to establish service population criteria which would attempt to maximize cost effectiveness, while at the same time maximizing the opportunity of all Tribes to participate in the program. This would be preferable to a "bright line legislative test" setting a minimum service population size because we believe that such an approach would be too inflexible to meet the varied situations present in Indian country and could penalize certain small Tribes unnecessarily and unfairly. For example, the minimum service population size required might vary from Tribe to Tribe depending upon the geographic setting of a tribe of the Tribe's existing infrastructure. The regulatory process, as opposed to a strict legislative prescription, will better allow for the development of criteria that will incorporate the many difference nuances needed to reflect the complexity of Indian country and Indian tribal situations.

■ **SPOKANE TRIBAL COMMENTS: SMALL TRIBES SHOULD BE ALLOWED TO ACCESS BLOCK GRANT FUNDS. HOWEVER, A CONCERN IS THAT SOME SMALL TRIBES ARE TOO ISOLATED TO EFFECTIVELY BE IN A CONSORTIA.**

LOWER ELWHA TRIBAL COUNCIL
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April 20, 1995

Senator John McCain, Chairman
Senate Committee on Indian Affairs
838 Hart SOB
Washington, DC 20210
Fax: (202) 224-2309

Dear Mr. Chairman,

On behalf of the Lower Elwha S'Klallam Tribe I would like to take this opportunity to respond to questions you have posed on the issues of block grants for social service programs and the Tribes' abilities to administer such programs. These responses are in addition to the comments which I faxed to you on March 29 in support of S. 285.

1. How can Congress provide for flexible tribal administrative authority and still hold a Tribe accountable for basic financial management and program implementation?

- Tribes which qualify to contract with the Interior or HHS Departments have already proven that their accounting procedures are legally adequate under OMB circular A-128, authorized by the Single Audit Act. As for flexibility, the Congress could direct HHS to work cooperatively with Tribes in order to develop criteria for program planning, implementation and monitoring. Many Tribes are well -- and successfully -- experienced in new program design, and, are also used to shouldering the responsibility for carrying out program requirements for the benefit of all eligible recipients.

2. How can Congress encourage Tribal and State courts to work cooperatively to set and enforce child support orders that off-set State and Tribal cash assistance programs?

- We await the National Congress of American Indians' report on Child Support Enforcement, and their recommendations.

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3. How can Congress establish clearly defined service populations, so that a State, a Tribe and the individuals in need of assistance can easily understand which individuals the State is to serve and which the Tribe is to serve, preventing duplicative service and gaps in service?

- Generally speaking, a Tribe should be funded and authorized to serve all Indians within the Tribe's customary service area. Customary service area is meant to include adjacent near-reservation areas in which the Tribe has program responsibility to serve all eligible Indians, as under most current social services. Within the Tribe's service area, the Tribe would have primary responsibility for providing services to eligible Indian people, with the State having a secondary role with respect to enrolled (either locally or distantly) Tribal members. Indian people would not be permitted to "double dip" to obtain identical benefits from a Tribe and the state; but, state services would be available to them where a Tribe did not offer a comparable service.

4. Would it be advisable for Congress to provide a Tribe with funds to serve non-member Indians on its reservation? How about non-Indians on its reservation?

- Generally yes, with respect to non-member Indians (please see response to #3, above). For non-Indians on the reservation, generally no; with exceptions, for example, on-reservation schools with non-Indian students.

5. Would it be advisable for Congress to provide a Tribe with funds to serve member Indians who reside off, but near the reservation? How about member Indians off, but near the reservation?

- Yes to both questions. Please see answer to #3 above.

6. Would it be advisable for Congress to provide a Tribe with funds to serve non-Indian members of an Indian's immediate family, such as a non-Indian parent whose child is an Indian?

- We believe that eligibility for services should accrue to an individual based on his or her status as an Indian. In those cases where services must necessarily be provided to an entire family, we feel that services should extend to the entire family in which there is an eligible Indian. Due to melding of eligible and non-eligible individuals in a single family, data documenting need may be incomplete; nevertheless, we feel that such families should be served by the Tribe.

7. Are there some programs or activities included in the House bill that simply do not make sense under any circumstance for a tribe to have a role in administering, even on a pass-through basis? If so, please identify them and explain why they do not make sense.

- No. We believe that each Tribal government should have the power to determine which federal social service program to operate for the benefit of its own people and other eligible Indians in the area. Tribes have demonstrated the ability to administer programs from many federal agencies, and with great success. The funding should come directly from the federal government to the Tribal government, since states often use Indian population to document need and then do not distribute funds commensurately. (Inspector General Report, August, 1994, Opportunities for ACF to Improve Child Welfare Services and Protections for Native American Children (OEI001-93-00110)

8. Would it be advisable for Congress to restrict tribal eligibility for some or all block grant funds to those meeting certain minimum service population size? If so, which funds and what size?
If not, would it be advisable to restrict the eligibility of smaller Tribes only through multi-tribal consortia with a minimum service population size?
If not, what mechanism can Congress use to make Tribal assumptions or pass-through control of federal welfare and social service funds cost-effective?

- We believe that principles of Tribal sovereignty and local government control militate in favor of individual Tribal governments' receiving a block grant, contracting or self governance compacting to operate a single, or an array of, social services program(s) -- at the Tribe's discretion. In some cases, where economies of scale dictate efficient operation and delivery of services, it may be necessary to require the formation of consortia. We believe that HHS should work closely with Tribes to develop regulations which respect tribal sovereignty and allow for the efficacious delivery of social services. Congress could mandate that the goal of such regulations would be to establish service population criteria which would attempt to maximize cost effectiveness, while at the same time maximizing the opportunity of all Tribes to participate in the particular program.

Mr. Chairman, we thank you for the opportunity to provide these comments to the Indian Affairs Committee. I remain

Cordially yours,

Frances G. Charles
Chairwoman

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